98-
S. HRG. 1078

LEGISLATIVE INITIATIVES TO CURB DOMESTIC AND INTERNATIONAL TERRORISM

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2470, ANTI-NUCLEAR TERRORISM ACT OF 1984; S. 2623, AIRCRAFT SABOTAGE ACT; S. 2624, ACT FOR THE PREVENTION AND PUNISHMENT OF THE CRIME OF HOSTAGE-TAKING; S. 2625, ACT FOR REWARDS FOR INFORMATION CONCERNING TERRORIST ACTS; AND S. 2626, PROHIBITION AGAINST THE TRAINING OR SUPPORT OF TERRORIST ORGANIZATIONS ACT OF 1984

JUNE 5, 6, AND 13, 1984

Serial No. J-98-123

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
37-785 O WASHINGTON : 1984

S521-76.

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, JR., Maryland	JOSEPH R. BIDEN, JR., Delaware
PAUL LAXALT, Nevada	EDWARD M. KENNEDY, Massachusetts
ORRIN G. HATCH, Utah	ROBERT C. BYRD, West Virginia
ROBERT DOLE, Kansas	HOWARD M. METZENBAUM, Ohio
ALAN K. SIMPSON, Wyoming	DENNIS DECONCINI, Arizona
JOHN P. EAST, North Carolina	PATRICK J. LEAHY, Vermont
CHARLES E. GRASSLEY, Iowa	MAX BAUCUS, Montana
JEREMIAH DENTON, Alabama	HOWELL HEFLIN, Alabama
ARLEN SPECTER, Pennsylvania	

VINTON DEVANE LIDE, *Chief Counsel and Staff Director*
DEBORAH K. OWEN, *General Counsel*
DEBORAH G. BERNSTEIN, *Chief Clerk*
MARK H. GITENSTEIN, *Minority Chief Counsel*

SUBCOMMITTEE ON SECURITY AND TERRORISM

JEREMIAH DENTON, Alabama, *Chairman*

ORRIN G. HATCH, Utah	PATRICK J. LEAHY, Vermont
JOHN P. EAST, North Carolina	HOWARD M. METZENBAUM, Ohio

JOEL S. LISKER, *Chief Counsel and Staff Director*
FRANCES R. WERMUTH, *Chief Clerk*

CONTENTS

Page

Hearings held:
Tuesday, June 5, 1984 1
Wednesday, June 6, 1984 95
Wednesday, June 13, 1984 161

PROPOSED LEGISLATION

S. 2470, a bill to provide for the national security by allowing access to certain Federal criminal records 3
S. 2623, a bill to implement the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, and for other purposes .. 6
S. 2624, a bill to implement the International Convention Against the Taking of Hostages 16
S. 2625, a bill to permit the payment of rewards for information concerning terrorist acts 21
S. 2626, a bill to prohibit the training, supporting, or inducing of terrorism, and for other purposes 28

STATEMENTS OF COMMITTEE MEMBERS

Denton, Senator Jeremiah 1, 95, 161
Metzenbaum, Senator Howard M 37
Hatch, Senator Orrin G 38
Leahy, Senator Patrick J 100, 103

CHRONOLOGICAL LIST OF WITNESSES

TUESDAY, JUNE 5, 1984

Toensing, Victoria, Deputy Assistant Attorney General, and Mark Richard, Deputy Assistant Attorney General, Criminal Division, Department of Justice; and Wayne R. Gilbert, Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation 42

WEDNESDAY, JUNE 6, 1984

DePree, Hon. Willard, Acting Under Secretary of State for Management, Department of State, accompanied by Terrell Arnold, Deputy Director, Office for Counter-Terrorism and Emergency Planning; Daniel McGovern, Principal Deputy Legal Adviser, and Geoffrey Levitt, Office of Legal Adviser 96
Landry, James E., senior vice president and general counsel, and Richard F. Lally, director of security, Air Transport Association; and Capt. Thomas Ashwood, vice president, Airline Pilots' Association 134
Berman, Jerry, American Civil Liberties Union, and Joseph Hassett, attorney, Hogan & Hartson, Washington, DC 142

WEDNESDAY, JUNE 13, 1984

Malsch, Martin G., Deputy General Counsel, Nuclear Regulatory Commission, accompanied by Donald B. Mausshardt, Deputy Director, Office of Nuclear Materials and Safeguards 163

Page

Lundvall, Arthur E., vice president, Baltimore Gas & Electric Co.; Joseph G. Deegan, general supervisor, loss prevention section of security services, Baltimore Gas & Electric Co., on behalf of the Edison Electric Institute; and David Hinman, manager of corporate security, Alabama Power Co 175

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Arnold, Terrell: Testimony 110
Ashwood, Thomas: Testimony 138
Berman, Jerry: Testimony 142
Deegan, Joseph G: Testimony 178
Denton, Senator Jeremiah:
Letter from Senators Jim Sasser and John Warner, cochairmen, Senate Tourism Caucus, to Hon. Jeremiah Denton, chairman, and Hon. Patrick J. Leahy, ranking member, Committee on the Judiciary, Subcommittee on Security and Terrorism, June 4, 1984 132
Attachment: "Do Res Computers Pose Security Threat?" Article from the Travel Agent, April 30, 1984 133
Letters to Senator Jeremiah A. Denton from:
Thomas J. Bader, senior security advisor, the Cleveland Electric Illuminating Co., June 5, 1984 162
Thomas J. Cassidy, senior vice president, Wisconsin Electric Power Co., June 5, 1984 162
"Nuclear Employee Data Systems [NEDS]: A Pilot Project," by NEDS project manager Dr. J. Mark Elliott and Richard H. Sutton 186
DePree, Willard:
Testimony 96
List of signatories to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage), done at Montreal, September 23, 1971, entered into force for the United States, January 26, 1973 112
Gilbert, Wayne R.:
Testimony 44
Prepared statement 59
Hassett, Joseph M.:
Testimony 142
Prepared statement 146
Hinman, David: Testimony 180
Lally, Richard F.: Testimony 141
Landry, James E.:
Testimony 134
Prepared statement 136
Lundvall, Arthur E.:
Testimony 175
Prepared statement of M.C. Street, general manager, corporate security department, Portland General Electric Co 177
McGovern, Daniel: Testimony 105
Malsch, Martin G.:
Testimony 163
Prepared statement of Herzel H.E. Plaine, Office of the General Counsel, U.S. Nuclear Regulatory Commission 169
Mausshardt, Donald B.: Testimony 167
Richard, Mark:
Testimony 62
Treaties and Other International Acts Series 7570: "Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage)." Convention between the United States of America and other governments, done at Montreal, September 23, 1971 64
List of countries that are signatories to the agreement 75
Toensing, Victoria:
Testimony 42
Prepared statement 46
Responses of the U.S. Department of Justice to written questions of Senator Leahy 122

LEGISLATIVE INITIATIVES TO CURB DOMESTIC AND INTERNATIONAL TERRORISM

TUESDAY, JUNE 5, 1984

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:11 a.m., in room SD-226, Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Also present: Senators Hatch and Metzenbaum.

Staff present: Joel S. Lisker, chief counsel and staff director; Gerald Everett, congressional fellow: John Podesta, minority chief counsel; and Carole Jansen, secretary.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Good morning. This hearing will come to order.

This hearing is the first in a series of 3 days of hearings that the Subcommittee on Security and Terrorism will hold on a number of legislative proposals that are aimed at addressing a growing problem: international and domestic terrorism.

The first 2 days of the hearings will examine primarily four legislative proposals that my distinguished colleague from South Carolina, Senate President pro tempore and the chairman of the Judiciary Committee, Senator Strom Thurmond, and I introduced on behalf of and at the request of President Reagan.

Before I go further, I wish to welcome, on my right, who came in first, the distinguished chairman of the Labor and Human Resources Committee, whose leadership on that committee has been important to our progress and an example to me. Also, I want to thank him for his support of my efforts as Chairman of the Security and Terrorism Subcommittee.

On my left, the distinguished Senator from Ohio, a friend in spite of our not always assuming exactly the same posture. I want to welcome them both, and I hope with the bipartisanship at this hearing we will give due consideration to that which is needed for these proposals.

As I mentioned, the first 2 days we will examine four legislative proposals cosponsored by Senator Thurmond and myself, who introduced them on behalf and at the request of the President. The first of these is S. 2623, known as the Aircraft Sabotage Act, which simply implements the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, and that Mon-

treal Convention is a treaty to which the United States is already a party, and which we have ratified.

S. 2624, the second of the four proposals, is implementing legislation for another treaty, the International Convention Against the Taking of Hostages, which we have ratified after having signed.

The third measure, S. 2625, would provide for the payment of rewards by the United States for information leading to the prevention of terrorist acts or the apprehension of persons having committed them both here in this country and abroad.

The last and fourth proposal, S. 2626, would make it a Federal offense to provide training, mechanical, logistical, or maintenance support, to any international terrorist group or foreign government acting in support of terrorist activity.

[S. 2470, S. 2623, S. 2624, S. 2625, and S. 2626 follow:]

II

98TH CONGRESS
2D SESSION

S. 2470

To provide for the national security by allowing access to certain Federal criminal history records.

IN THE SENATE OF THE UNITED STATES

MARCH 22 (legislative day, MARCH 19), 1984

Mr. DENTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To provide for the national security by allowing access to certain Federal criminal history records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Anti-nuclear Terrorism Act of 1984".

FINDINGS

SEC. 2. The Congress finds that—

(1) the presence of nuclear power facilities and nuclear material in our society represents a potential and grave threat to our national security should terrorists obtain access to such material;

(2) the increasing threat of terrorism directed against the United States is greatly enhanced by insider access to nuclear power facilities and nuclear material; and

(3) the Federal Bureau of Investigation should assist in screening persons who have access to nuclear facilities and material.

NATIONAL SECURITY ACCESS

SEC. 3. (a) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended by adding after section 148 the following new section:

"SEC. 149. FINGERPRINTING FOR SECURITY CLEARANCE.—

"a. Every person in the process of being licensed or licensed pursuant to section 103 or 104b to operate a utilization facility shall require that each individual allowed unescorted access to the facility be fingerprinted. All fingerprints obtained by a licensee as required in the preceding sentence shall be submitted to the Attorney General of the United States through a person or persons designated by the Commission in consultation with the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, the licensee may receive from the Attorney General the results of such search.

"b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its responsibilities to promote the common defense and security and to protect the health and safety of the public.".

(b) The table of contents at the beginning of such Act is amended by inserting after the item for section 148 the following new item:

"Sec. 149. Fingerprinting for security clearance.".

II

98TH CONGRESS
2D SESSION

S. 2623

To implement the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2 (legislative day, APRIL 30), 1984

Mr. THURMOND (for himself and Mr. DENTON) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To implement the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Aircraft Sabotage Act".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. The Congress hereby finds that—

(a) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (ratified

by the United States on November 1, 1972), requires each contracting State to establish its jurisdiction over certain offenses affecting the safety of civil aviation;

(b) such offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, gravely affect interstate and foreign commerce, and are offenses against the law of nations; and

(c) the purpose of this Act is to implement fully the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and to expand the protection accorded to aircraft and related facilities.

SEC. 3. (a) Section 31 of title 18, United States Code, is amended—

(1) in the first paragraph by—

(A) striking out "and" before the term "spare part" and inserting "and 'special aircraft jurisdiction of the United States'" after the term "spare part"; and

(B) striking out "Civil Aeronautics Act of 1938" and inserting in lieu thereof "Federal Aviation Act of 1958";

(2) by striking out "and" at the end of the third undesignated paragraph thereof;

(3) by striking the period at the end thereof and inserting in lieu thereof ";" ; and

(4) by adding at the end thereof the following new paragraphs:

" 'In flight' means any time from the moment all the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing the flight shall be deemed to continue until competent authorities take over the responsibility for the aircraft and the persons and property on board; and

" 'In service' means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight.".

(b) Section 32 of title 18, United States Code, is amended to read as follows:

"§ 32. Destruction of aircraft or aircraft facilities

"(a) Whoever willfully—

"(1) sets fire to, damages, destroys, disables, or interferes with the operation of or makes unsuitable for use any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

"(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft;

"(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes with the operation of such facility, if such fire, damaging, destroying, disabling, or interfering is likely to endanger the safety of any such aircraft in flight;

"(4) with the intent to damage, destroy, or disable any such aircraft, sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading, or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

"(5) performs an act of violence against or incapacitates any individual on any such aircraft, if such

act of violence or incapacitation is likely to endanger the safety of such aircraft;

"(6) communicates information, knowing the information to be false, thereby endangering the safety of any such aircraft in flight; or

"(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection—

shall be fined not more than $100,000 or imprisoned not more than twenty years or both.

"(b) Whoever willfully—

"(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

"(2) destroys a civil aircraft registered in a country other than the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;

"(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that air-

craft incapable of flight or which is likely to endanger that aircraft's safety in flight; or

"(4) attempts to commit an offense described in paragraphs (1) through (3) of this subsection—

shall, if the offender is later found in the United States, be fined not more than $100,000 or imprisoned not more than twenty years, or both.".

(c) Section 101(38)(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(38)(d)), relating to the definition of the term "special aircraft jurisdiction of the United States", is amended—

(1) in clause (i), by striking out "; or" and inserting in lieu thereof a semicolon;

(2) at the end of clause (ii), by striking out "and" and inserting in lieu thereof "or;" and

(3) by adding at the end thereof the following new clause:

"(iii) regarding which an offense as defined in subsection (d) or (e) of article I, section I, of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal, September 23, 1971), is committed if the aircraft lands in the United States with an alleged offender still on board; and".

(d)(1) Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Imparting or conveying threats

"Whoever imparts or conveys any threat to do an act which would be a felony prohibited by section 32 or 33 of this chapter or section 1992 of chapter 97 or section 2275 of chapter 111 of this title with an apparent determination and will to carry the threat into execution shall be fined not more than $25,000 or imprisoned not more than five years, or both.".

(2) The analysis of chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following new item:

"36. Imparting or conveying threats.".

SEC. 4. (a)(1) Section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1471) is amended by adding at the end thereof the following new subsections:

"(c) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of section 902 of this Act, shall be subject to a civil penalty of not more than $10,000 which shall be recoverable in a civil action brought in the name of the United States.

"(d) Except for law enforcement officers of any municipal or State government or officers or employees of the Federal Government, who are authorized or required within their official capacities to carry arms, or other persons who may be so authorized under regulations issued by the Administrator, whoever while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight shall be subject to a civil penalty of not more than $10,000 which shall be recoverable in a civil action brought in the name of the United States.".

(2) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 901. Civil penalties."

is amended by inserting at the end thereof:

"(c) Conveying false information.
"(d) Concealed weapons.".

(b) Section 901(a)(2) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(2)) is amended by inserting the words: "penalties provided for in subsections (c) and (d) of this section or" after the words "Secretary of Transportation in the case of".

37-785 O - 84 - 2

(c)(1) Section 902(l)(1) of the Federal Aviation Act of 1958 (49 U.S.C 1472(l)(1) is amended by striking the term "$1,000" and inserting in lieu thereof the term "$10,000".

(2) Section 902(l)(2) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(l)(2)) is amended by striking the term "$5,000" and inserting in lieu thereof "$25,000".

(d)(1) Section 902(m) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(m)) is amended to read as follows:

"FALSE INFORMATION AND THREATS

"(m)(1) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a felony prohibited by subsection (i), (j), (k), or (l) of this section, shall be fined not more than $25,000 or imprisoned not more than five years, or both.

"(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsection (i), (j), (k), or (l) of this section with an apparent determination and will to carry the threat into execution shall be fined not more than $25,000 or imprisoned not more than five years, or both.".

(2) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 903. Criminal penalties."

is amended by striking out

"(m) False information."

and inserting in lieu thereof

"(m) False information and threats.".

(e) Subsection (a) of section 1395 of title 28, United States Code, is amended by striking the period at the end of such subsection and adding the following at the end thereof: ", and in any proceeding to recover a civil penalty under section 35(a) of title 18 of the United States Code or section 901(c) or 901(d) of the Federal Aviation Act of 1958, all process against any defendant or witness may be served, regardless whether authorized under the Federal Rules of Civil Procedure, in any judicial district of the United States upon an ex parte order for good cause shown.".

(f) The second sentence of section 903(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1473(b)(1)) is amended by striking out "Such" and inserting in lieu thereof "Except with respect to civil penalties under sections 901 (c) and (d) of this Act, such".

SEC. 5. This Act shall become effective on enactment.

II

98TH CONGRESS
2D SESSION

S. 2624

To implement the International Convention Against the Taking of Hostages.

IN THE SENATE OF THE UNITED STATES

MAY 2 (legislative day, APRIL 30), 1984

Mr. THURMOND (for himself and Mr. DENTON) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To implement the International Convention Against the Taking of Hostages.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Act for the Prevention and Punishment of the Crime of Hostage-Taking".

STATEMENT OF FINDINGS AND PURPOSE

SEC. 2. The Congress hereby finds that—

(a) the International Convention Against the Taking of Hostages (adopted by the United Nations, December 17, 1979), requires all States parties to it to

prohibit the offense of hostage-taking as defined in the Convention;

(b) hostage-taking affects domestic tranquility, interstate and foreign commerce, and foreign relations, endangers national security, and is an offense against the law of nations;

(c) the purpose of this title is to fully implement the International Convention Against the Taking of Hostages.

SEC. 3. (a) Section 1201 of title 18, United States Code, is amended—

(1) by deleting in subsection (a)(3) the words "section 101(36) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(36))" and inseting in lieu thereof "section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38))";

(2) by deleting "or" at the end of subsection (a)(3);

(3) by deleting the comma at the end of subsection (a)(4) and inserting "; or" in lieu thereof;

(4) by adding a new subsection (a)(5) after subsection (a)(4) as follows:

"(5) a threat is made to kill, injure, or to continue to detain the person in order to compel a third party to

do or abstain from doing any act as an explicit or implicit condition for the release of the person,";

(5) by amending subsection (d) to read as follows:

"(d) Whoever attempts to violate subsection (a)(4) or subsection (a)(5) shall be punished by imprisonment for not more than twenty years.";

(6) by amending subsection (e) to read as follows:

"(e) If the victim of an offense under subsection (a) is an internationally protected person, or if a threat is made to kill, injure, or to continue to detain the victim in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the victim, the United States may exercise jurisdiction over the offense if the offense was committed within the United States; the alleged offender is a national of the United States; the victim or purported victim was a national of the United States; or the offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the term 'United States' includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38)) and the term 'national of the United States' has the meaning given to it in section

101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22).";

(7) by amending subsection (f) to read as follows:

"(f) In the course of enforcement of subsection (a)(4) or subsection (a)(5), and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4) or subsection (a)(5), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, Marine Corps, and Air Force, any statute, rule, or regulation to the contrary notwithstanding."; and

(8) by inserting a new subsection (g) to read as follows:

"(g) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, commonwealth, territory or possession of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibilities for prosecuting acts that may be violations of this section and that are violations of State and local law, nor shall anything in subsection (a)(5) of this section be construed as authorizing the United States to exercise jurisdiction over an offense occurring in the United States in which the alleged offender is the parent, child, spouse, broth-

er or sister of any victim or in which the alleged offender and any victim live in the same household and are related by blood or marriage.".

(b)(1) The heading of section 1201 of title 18, United States Code, is amended to read as follows:

"§ 1201. Kidnaping and hostage-taking".

(2) The analysis for chapter 55 of title 18, United States Code, is amended by deleting the item relating to section 1201 and inserting in lieu thereof the following new item:

"1201. Kidnaping and hostage-taking.".

EFFECTIVE DATE

SEC. 4. Sections 2 and 3 of this Act shall become effective only when the International Convention Against the Taking of Hostages has come into force and the United States has become a party to it.

○

II

98TH CONGRESS
2D SESSION

S. 2625

To permit the payment of rewards for information concerning terrorist acts.

IN THE SENATE OF THE UNITED STATES

MAY 2 (legislative day, APRIL 30), 1984

Mr. THURMOND (for himself and Mr. DENTON) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 15 (legislative day, JUNE 11), 1984

Ordered, that if and when reported, the bill be referred to the Committee on Foreign Relations for a period of not to exceed thirty days, excluding any period of recess longer than three days

---

A BILL

To permit the payment of rewards for information concerning terrorist acts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Act for Rewards for Information Concerning Terrorist Acts".

SEC. 2. (a) Title 18 of the United States Code is amended by adding the following new chapter after chapter 203:

"CHAPTER 204—REWARDS FOR INFORMATION CONCERNING TERRORIST ACTS

"Sec. 3071. Information for which rewards authorized; maximum amount.
"Sec. 3072. Determination of entitlement; consultation; Presidential approval; conclusiveness.
3073. Aliens; waiver of admission requirements.
3074. Hearings; rules and regulations.
3075. Protection of identity.
3076. Exception of governmental officials.
3077. Authorization for appropriations.
3078. Eligibility for witness security program.
3079. Definitions.

"§ 3071. Information for which rewards authorized; maximum amount

"Any individual who furnishes information—

"(a) leading to the arrest or conviction, in any country, of any individual or individuals for the commission of an act of terrorism against a United States person or United States property; or

"(b) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of terrorism against a United States person or property; or

"(c) leading to the prevention, frustration, or favorable resolution of an act of terrorism against a United States person or property.

may be rewarded in an amount not to exceed $500,000.

"§ 3072. Determination of entitlement; consultation; Presidental approval; conclusiveness

"The Attorney General shall with respect to acts of terrorism primarily within the territorial jurisdiction of the United States, and the Secretary of State shall with respect to acts of terrorism primarily outside the territorial jurisdiction of the United States, determine whether an individual furnishing information pursuant to section 3071 is entitled to a reward and the amount to be paid. Before making a reward under this chapter in a matter over which there is Federal criminal jurisdiction, the Secretary of State shall advise and consult with the Attorney General. A reward of $100,000 or more may not be made without the approval of the President or his designee. A determination made by the Attorney General, the Secretary of State, or the President under this chapter shall be final and conclusive and no court shall have power or jurisdiction to review it.

"§ 3073. Aliens; waiver of admission requirements

"If the information which would justify a reward under this chapter is furnished by an alien, the Attorney General, after consulting with the Secretary of State, may determine that the entry of such alien into the United States is in the public interest and, in that event, such alien and the members of his immediate family may receive immigrant visas and may be admitted to the United States for permanent residence,

notwithstanding the requirements of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

"§ 3074. Hearings; rules and regulations

"The Attorney General and the Secretary of State, respectively, are authorized to hold such hearings and make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this chapter. The provisions of subchapter II, chapter 5, of title 5, United States Code, do not apply to this chapter.

"§ 3075. Protection of identity

"Any reward granted under this chapter shall be certified by the Attorney General or the Secretary of State, respectively. If it is determined that the identity of the recipient of a reward or of the members of the recipient's immediate family must be protected, the Attorney General or the Secretary of State, respectively, may take such measures in connection with the payment of the reward as deemed necessary to effect such protection.

"§ 3076. Authorization for appropriations

"Such sums as necessary are authorized to be appropriated for the purpose of this chapter.

"§ 3077. Exception of governmental officials

"No officer or employee of any governmental entity who, while in the performance of his official duties, furnishes

the information described in section 3071 shall be eligible for any monetary reward under this chapter.

"§ 3078. Eligibility for witness security program

"Any individual who furnishes information which would justify a reward under this chapter and his immediate family may, in the discretion of the Attorney General, participate in the Attorney General's witness security program authorized under title V of the Organized Crime Control Act of 1970.

"§ 3079. Definitions

"As used in this chapter, the term—

"(a) 'act of terrorism' means an activity that—

"(1) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

"(2) appears to be intended—

"(A) to intimidate or coerce a civilian population;

"(B) to influence the policy of a government by intimidation or coercion; or

"(C) to affect the conduct of a government by assassination or kidnaping.

"(b) 'United States person' means—

"(1) a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(2) an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

"(3) any person within the United States;

"(4) any employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(5) a sole proprietorship, partnership, company, or association composed principally of nationals or permanent resident aliens of the United States; and

"(6) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States and a foreign subsidiary of such corporation.

"(c) 'United States property' means any real or personal property which is within the United States or, if outside the United States, the actual or beneficial ownership of which rests in a United States person or any Federal or State governmental entity of the United States.

"(d) 'United States'—

"(1) when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States; and

"(2) when used in the context of section 3073 shall have the meaning given to it in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

"(e) 'State' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

"(f) 'government entity' includes the Government of the United States, any State or political subdivision thereof, any foreign country, and any state, provincial, municipal, or other political subdivision of a foreign country.

"(g) 'Attorney General' means the Attorney General of the United States or that official designated by the Attorney General to perform his responsibilities under this chapter.

"(h) 'Secretary of State' means the Secretary of State or that official designated by the Secretary of State to perform his responsibilities under this chapter.".

(b) The chapter analysis of part II of title 18, United States Code, is amended by adding after the item relating to chapter 203 the following new item:

"204. Rewards for information concerning terrorists acts ..... 3071".

○

II

98TH CONGRESS
2D SESSION

S. 2626

To prohibit the training, supporting, or inducing of terrorism, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2 (legislative day, APRIL 30), 1984

Mr. THURMOND (for himself and Mr. DENTON) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 15 (legislative day, JUNE 11), 1984

Ordered, that if and when reported, the bill be referred to the Committee on Foreign Relations for a period of not to exceed thirty days, excluding any period of recess longer than three days

---

A BILL

To prohibit the training, supporting, or inducing of terrorism, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Prohibition Against the Training or Support of Terrorist Organizations Act of 1984".

SEC. 2. Title 18 of the United States Code is amended by adding the following new chapter after chapter 113:

"CHAPTER 113A—TERRORISM

"Sec.
2331. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups.

"§ 2331. Military and intelligence assistance to certain foreign governments, factions, and international terrorist groups

"(a) Except as provided in subsections (h) and (i), it shall be unlawful for any national of the United States, any permanent resident alien of the United States, or any United States business entity to willfully perform or attempt to perform anywhere in the world any of the following acts:

"(1) serve in, or act in concert with, the armed forces or any intelligence agency of any foreign government, faction, or international terrorist group which is named in a determination in effect under subsection (d);

"(2) provide training in any capacity to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d);

"(3) provide any logistical, mechanical, maintenance, or similar support services to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist

group named in a determination in effect under subsection (d); or

"(4) recruit or solicit any person to engage in any activity described in subparagraphs (1) through (3) of this paragraph.

"(b) Except as provided in subsections (h) and (i), it shall be unlawful for any person or entity within the boundaries of the United States, its territories or possessions, to willfully perform or attempt to perform any of the following acts:

"(1) provide training in any capacity to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d);

"(2) provide any logistical, mechanical, maintenance, or similar support services to the armed forces or any intelligence agency, or their agents, of any foreign government, faction, or international terrorist group named in a determination in effect under subsection (d); or

"(3) recruit or solicit any person to engage in any activity described in subparagraphs (1) or (2) of this paragraph.

"(c) Whoever violates this section shall be fined not more than five times the total compensation received for such violation, or $100,000, whichever is greater, or imprisoned for not more than ten years, or both, for each such offense.

"(d) Whenever the Secretary of State finds that the acts or likely acts of international terrorism of a foreign government, faction, or international terrorist group are such that the national security, foreign relations, or the physical security of the person or property of a private entity of the United States warrant a ban on the foreign government's, faction's or international terrorist group's receipt of services or other assistance in support of such acts as described in subsection (a) or (b), he may issue a determination naming such foreign government, faction, or international terrorist group for which such finding has been made. If the Secretary of State finds that the conditions which were the basis for any determination issued under this subsection have changed in such a manner as to warrant revocation of such determination, or that the national security or foreign relations of the United States so warrant, he may revoke such determination in whole or in part. Any determination issued pursuant to this subsection shall cease to have any effect one year from the date of its publication unless renewed at or before that time by the Secretary of State. Any determination, or the renewal or revocation thereof, issued pursuant to this subsection shall

be published in the Federal Register and shall become effective immediately on publication. Any revocation or lapsing of a determination shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation or lapsing.

"(e) For the purpose of this section, any finding of fact made in any determination or renewal issued pursuant to subsection (d) shall be conclusive. No question concerning the validity of the issuance of such determination or renewal may be raised by a defendant as a defense in or as an objection to any trial or hearing if such determination or renewal was issued and published in the Federal Register in accordance with subsection (d).

"(f) An affirmative defense shall exist with respect to any act committed outside of the United States within thirty days after the effective date of any determination affecting such person if the act was performed pursuant to an agreement or contract entered into prior to the effective date of the determination.

"(g)(1) Whoever has been convicted of a violation of this section, in addition to any other penalty prescribed by this section, shall forfeit to the United States—

"(A) any property constituting, or derived from, any proceeds he obtained, directly or indirectly, as a result of such violation; and

"(B) any of his property used, or intended to be used, to commit, or to facilitate the commission of, such violation.

"(2) The procedures in any criminal forfeiture under this section, and the duties and authority of the courts of the United States and the Attorney General with respect to any criminal forfeiture action under this section or with respect to any property that may be subject to forfeiture under this section, are to be governed by the provisions of section 1963 of this title.

"(h) This section shall not be construed to prohibit the provision of medical services or medical training for humanitarian purposes, or the recruitment or solicitation thereof.

"(i) Nothing in this section shall be construed to create criminal liability for any activities conducted by officials of the United States Government, or their agents, which are properly authorized and conducted in accordance with Federal statutes and Executive orders governing such activities.

"(j) for the purposes of this section—

"(1) the term 'foreign government' has the meaning given it in section 1116(b)(2) of this title;

"(2) the term 'armed forces' includes any regular, irregular, paramilitary, guerrilla, or police force;

"(3) the term 'faction' includes any political party, body of insurgents, or other group which seeks to over-

throw the government of, become the government of, or otherwise assert control over or influence any foreign country or territory, possession, department, district, province, or other political subdivision of any such foreign country through the threat or use of force of arms:

"(4) the term 'group' means an association of persons, whether or not a legal entity;

"(5) the term 'international terrorist group' means a group which engages in international terrorism;

"(6) the term 'international terrorism' has the meaning given to it in section 101(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(c));

"(7) the term 'intelligence agency' means any entity which engages in the collection, analysis, or dissemination of information concerning the activities, capabilities, plan or intention of governments, organization, or persons, in whole or in part by covert means;

"(8) the term 'United States business entity' means any sole proprietorship, partnership, company, association, or corporation organized under the laws of, or having its principal place of business within the United States, any State, the District of Columbia, or any territory or possession of the United States;

"(9) the term 'national of the United States' has the meaning given to it in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

"(10) the term 'permanent resident alien of the United States' means an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

"(11) the term 'private entity of the United States' means

"(A) an individual who is—

"(i) a national of the United States; or

"(ii) a permanent resident alien of the United States;

"(B) an employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

"(C) a sole proprietorship, partnership, company, or association composed in whole or in part of nationals or permanent resident aliens of the United States; or

"(D) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the

United States, and any foreign subsidiary of such corporation.".

SEC. 3. The chapter analysis of part I of title 18 is amended by adding the following new item after the item relating to chapter 113:

"113A. Terrorism ..... 2331".

SEC. 4. Section 3238 of title 18, United States Code, is amended by—

(1) striking out "The" and inserting in lieu thereof "(a) Except as provided in subsection (b), the"; and

(2) adding at the end the following new subsection:

"(b) The trial of any offense under section 2331 of this title which is committed out of the jurisdiction of any particular State or district may be in any district. Nothing contained in this subsection may be construed to restrict any right of a defendant under any rule in effect under section 3771 of this title.".

SEC. 5. Section 11 of title 18 is amended by striking out the phrase "as used in this title except in sections 112, 878, 970, 1116, and 1201," and inserting in lieu thereof: "as used in this title except in sections 112, 878, 970, 1116, 1201, and 2331,".

O

Senator DENTON. Our witnesses this morning, and I would like to welcome the three of them, are Mark Richard and Victoria Toensing, both of whom are Deputy Assistant Attorneys General in the Criminal Division at the Department of Justice. Mr. Richard is on my right. The person in the center is obviously Ms. Toensing, and on my left is Wayne Gilbert, the Deputy Assistant Director of the Criminal Investigative Division of the Federal Bureau of Investigation. Mr. Richard has appeared before this subcommittee on a number of previous occasions, and Ms. Toensing, prior to her appointment with the Department of Justice, served as chief counsel to the Senate Intelligence Committee. This is Mr. Gilbert's first appearance before the subcommittee, although his immediate superior, Mr. Buck Revell, has appeared before us many times.

We welcome all of you on behalf of the subcommittee, and before going to your opening statements, I will defer first to the ranking minority member of this subcommittee, the distinguished Senator from Ohio, Senator Metzenbaum.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Thank you, Mr. Chairman.

Mr. Chairman, today we begin consideration of a number of bills aimed at stopping international terrorism.

Now, I do not think that anybody in this body has greater contempt than I do for lawless terrorists who prey upon innocent civilians. One of the finest young men that I ever knew was a victim of terrorist activities at the Olympics. He was the young American boy who was killed without any justification or cause, and to this day I feel that hurt and that loss.

So, I do not speak as one who has any thought of protecting these terrorists, but I am concerned about protecting our cherished Bill of Rights, our Constitution, and do not want to destroy the Constitution in an overzealous effort to root out the wrongdoers, the terrorists.

S. 2626 is, in my view, frankly, a throwback to the McCarthy era. It permits the Secretary of State to designate an organization and say that it is an international terrorist group. It then imposes stiff criminal penalties on any American who, anywhere in the world, acts in concert with, whatever that means, or provides logistical support, whatever that means, for such designated groups.

Does that mean that making a public speech in support of lawful aims of terrorist groups could be punished? Would fundraising and other constitutionally protected rights become unlawful?

I am concerned that under this proposal you would not even have an opportunity to challenge the designation, because the legislation precludes the right to challenge the designation in a court case.

Now, it is difficult to oppose legislation of this kind because everyone agrees that stopping terrorism is the American thing to do. Frankly, I agree that stopping terrorism is the American thing to do, but I say that we must not make an effort to stop terrorism in an un-American way that tramples upon our constitutional rights and liberties.

I believe that many of the bill's provisions are clearly unconstitutional. The Supreme Court has made it clear time and again that the Constitution requires narrowly drawn statutes so that those in sympathy with the legitimate aims of an organization, such as Irish Republicanism or the abolition of South African apartheid or so many other issues that exist in this world, cannot and will not be punished unless they accomplish or attempt to accomplish their objectives through violence.

The Supreme Court spoke out quite forcefully on that issue in the case of *Noto* v. *United States,* in 1961.

President Truman faced this same issue, about 30 years ago, in dealing with anti-Communist legislation, and what he said is equally as applicable today as it was then.

> These measures must not be so broad as to restrict our liberty unnecessarily for that would defeat our ends. Unwise or excessive security measures can strike at the freedom and dignity of the individual, which are the very foundation of our society and the defense of which is the whole purpose of our security measures.

President Truman said that on August 8, 1950, in his address to the Congress of the United States.

Frankly, I am not certain that any additional legislation is needed which would effectively combat terrorism. It is my guess that the problem is not a matter of legislation, but the problem is the question of enforcing the legislation that we presently have on the books and the difficulty, and it is a difficulty and I recognize it to be such, of stamping out terroristic activities or terroristic organizations.

But if we do need additional legislation, then I would be willing to consider narrow proposals to punish those who engage in gunrunning or mercenary activity or other unlawful conduct which aids and abets terrorism. But I am not willing to destroy our Constitution just so that Congress can appear to be doing something about a very challenging problem if, in so doing, we in the Congress would be acting to invade the constitutional liberties and freedoms that people in this country possess, and which I hope they will possess for many hundreds of years into the future.

Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator.

This chairman has no interest in trampling upon the Bill of Rights, and I do believe that these proposals require careful scrutiny in that respect, and that is the purpose of these hearings.

I must say that to go so far as to suggest that no legislation at all is required would be to suggest that the Montreal Convention, which was signed some 12 years ago, not have enabling legislation. I believe you would have no problem with the observance of that international agreement. It is one for which legislation is required.

So we will just have to proceed in the hearing to find out how far is enough and how far is too much, but I am with you, certainly, in the spirit of what you just expressed.

Senator Hatch, the distinguished Senator from Utah.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

Mr. Chairman, this marks the first day of hearings by the Subcommittee on Security and Terrorism on the subject of proposed legislation to combat domestic and international terrorism.

Let me extend my admiration to the distinguished chairman of this subcommittee, my friend and colleague from Alabama, Senator Denton, for his willingness to tackle this issue with the appropriate degree of urgency.

There are few issues confronting this Nation that pose as serious a dilemma as that of dealing effectively with such subversive activity. At the outset of these hearings, I would just like to make one point that I believe is relevant as we consider this legislation.

An extensive share of the debate over legislation in both the areas of domestic crime and terrorism seems to be dominated by those who are self-fashioned civil libertarians. Such individuals, it seems to me, have a tendency to couch debate in these areas as if there is some natural conflict between the interests of law enforcement, or the interests of combatting subversive activity, and the Constitution.

Too often we are warned by these self-styled proponents of individual rights that any effective crime fighting measure is inconsistent with the Constitution. I think such warnings are always good.

On the other hand, their constant refrain is and has been through the years that I have been here and, I think, before I got here that bail reform is in violation of the eighth amendment. The Freedom of Information Act reform is in violation of the first amendment. Habeus corpus reform is in violation of the fifth amendment, and the exclusionary rule reform is in violation of the fourth amendment, and we go on and on and on, year after year, as people get trampled on all over this country because we are not willing to do what really has to be done to protect the interests and the freedoms, I might add, individual freedoms, of people in this country.

This is their constant refrain. I would anticipate from this crowd that virtually any legislation designed to cope with the threat posed by domestic terrorism will run up against the first amendment, the freedom of expression. That is probably what their argument will be now.

According to such observers, the Government has little choice but to wait until subversive organizations actually set off their pipe bombs and sabotage public facilities before we can treat their activities as more than just plain protected expression.

Indeed, we have already seen such violent and disruptive activities defended as "symbolic speech" even after they have occurred. So let's not get entangled in the rhetoric that we too often hear on these issues. Let's start talking about reality, the everyday reality in this country that is something we have not had to face until recent years.

As chairman of the Subcommittee on the Constitution, I yield to no one in my commitment to the principles of the Bill of Rights. I believe in their constant and unswerving application to all individuals and to all organizations, no matter how unpopular their cause and no matter how dissatisfying their ultimate objectives.

On the other hand, I intend to do my best to see that public policy in the area of terrorism is not fashioned and administered

by the same persons who have done such an outstanding job in setting public policy in the area of violent crime, which is constantly increasing in this country because we will not do what has to be done.

We passed a bill through the Senate 91 to 1 reforming the criminal laws of this country. Ninety-one to one, yet it arrives in the House, and they say it is dead on arrival. Something is wrong here. Either the Senate consists of a bunch of dumb stumble-bums or the House of Representatives is not doing what has to be done, I suspect that any rational person who looks at it has to conclude that the House of Representatives is not doing what should be done.

The U.S. Constitution is not a suicide pact. It is not inhospitable to law enforcement. It is not a barrier to effective antiterrorist activities. It is not at odds with the objectives of law and order and domestic tranquility. Only in the minds of those who abuse and distort the notion of civil liberties is our Constitution an impediment that law abiding people have to overcome in order to defend themselves, their families, their property and, of course, their institutions.

It is about time that those of us who are concerned about growing terrorist activity, as well as continuing high levels of violent crime, stop forfeiting the good name of the Constitution.

Mr. Chairman, I look forward to these hearings, although I have not fully had the opportunity to assess all aspects of the legislation presently before us. I intend to assist you and this subcommittee in whatever way possible to expedite the passage of effective antiterrorist legislation.

Already, as I look around me in Washington and see the cement barriers around the Capitol and the White House, the increased security procedures in the Senate office buildings, and the increasingly limited movement of high Government officials, I see the indirect toll of terrorism. I am determined that my children, my grandchildren and, of course, all of our children and people in this country never take these things for granted.

I am also determined that threats of terrorism never disrupt the pattern and fabric of the quality of life in Washington or elsewhere, as have threats of violent crime transformed it for millions in our inner city areas.

Now, we can face this problem or we can ignore it. We can sweep it under the rug, or we can come right out and say we are not going to put up with this in a free society and open society. In order to maintain a free and open society, we have to have reasonable laws to restrain those who would disrupt and ruin it.

To the extent we do not act on this, and we are not doing that today, we are going to have more and more problems than we ever dreamed imaginable. Take my advice, look at Europe. Look at Italy and some of the other places where there is rampant terrorism. You won't like it.

What we have to do is make sure the privileges in the Bill of Rights and the first amendment are protected fully in this legislation. On the other hand, let's not be so foolish as to brand everything that allows for protections to the vast majority of citizens in this country as something that may fly in the face of civil liberties.

I believe we ought to do what is right for the country, so in the end all of us will be better off. Then perhaps we can continue to maintain this country as the freest nation of all, a country where people can walk the streets unmolested, and where political leaders are not afraid to go out in public. I believe this is an important task for us to undertake. I am sure these bills will be a good focal point for us to begin this discussion.

I thank you, Mr. Chairman, for the courage of being able to do this.

Senator DENTON. Thank you, Mr. Chairman from my other committee, and I cherish your support, especially in view of your position as chairman of the Subcommittee on the Constitution.

I will now turn to the witnesses with one preliminary remark. Again, I would assure the distinguished Senator from Ohio and my friend that it is not my intent to trample on the Bill of Rights.

I would like to mention one revelation to me which casts into a different context than many of us have the growing nature of terrorism and its increasing connection, if you will—and you will understand what I mean by "connection, if you will" after I relate this brief story—between organized crime internationally and terrorism.

I was just visited by the Ambassador to Bogota, Colombia, and he came to me because we have had some long relationship in this field. He told me about the murder of the Minister of Justice, who happened to be his best friend, a very liberal man, a man who was a Socialist, but what you might call a Social Democrat in Colombia. He was shot by a number of men many times, in spite of being heavily guarded, and he was on a campaign to eliminate the refinement and exportation of cocaine.

The important point is that up until that revelation from the Ambassador, I was aware that Fidel Castro was expediting, and I helped with my staff reveal the fact that Fidel Castro was expediting, the flow of narcotics into the United States, providing all sorts of sophisticated electronic assistance, safe harbor, and so on, for which he extracted fees and with which moneys he purchased arms, which were then sent to the M-19, a Communist insurgent group in Colombia.

That situation has now changed. Another Communist insurgent group in Colombia called FARC is now exacting from the morally and internationally indifferent drug traders protection money to the tune of $100 million in Colombia itself, which makes it unnecessary for them to look to Cuba for the financing of the purchase of their arms. They do it themselves.

This kind of thing is spreading. I hesitate to guess how much aid we give to Colombia in trying to keep what is left of whatever democracy it has, but it has four major Communist insurgent groups working down there, one of which is getting $100 million a year from just protection money in drugs alone.

So it is a problem which we are going to have to become familiar with on the floor of this body. We are not familiar with it. The information that I have is not getting around. I cannot say it is because I do not try, but we are all very busy with many things. I hope this hearing tends to add knowledge, which is the root of power, to legislate properly.

I now welcome again our witnesses and ask Ms. Toensing if she cares to open with her remarks.

STATEMENTS OF VICTORIA TOENSING, DEPUTY ASSISTANT ATTORNEY GENERAL, MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE; AND WAYNE R. GILBERT, DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION

Ms. TOENSING. Good morning, Mr. Chairman. Thank you for already introducing the panel.

I would like to explain that when I left the Senate and went to the Department of Justice, Mr. Richard, who previously had responsibility for the General Litigation Section, gave that section to me, and he still retains responsibility for the Internal Security Section. So Mr. Richard and I share this area of terrorism, and that is why both of us are appearing before you today.

Mr. Chairman, a formal statement has been submitted for the record. I will forego reading that entire statement, but I would like to touch briefly on certain aspects of the legislation. When I am through, Mr. Gilbert will read a statement, and then we will be happy to answer any questions for the members.

Mr. Chairman, terrorist acts have become an ever-increasing threat in the past decade. No one needs to emphasize that point to the members and employees of the U.S. Senate. We all recall vividly the bombing of the Capitol, which occurred just over 7 months ago. In one second, the whole balance of power in the U.S. Senate could have been changed.

No citizen knows when the event or public place he or she attends is the one marked by the terrorists for their message of violence. Our legal arsenal must be sufficiently filled so that we are capable of responding to terrorism, but it is not.

Not only does the present law have loopholes in addressing this insidious problem, but also it lacks some creative solutions, such as the proposed rewards bill in the legislative package that you have before you.

Our efforts must be strong, but they must also preserve the constitutional rights and the liberties valued in our society. Additionally, our condemnation must be for all terrorist acts, whether they are committed by friend or by foe.

We believe, Mr. Chairman, that the President's package comports with these requirements, and we hope that your subcommittee and the other jurisdictional committees will act speedily on them in this legislative session.

Let me turn briefly to the four bills. The first two are the implementing legislation for international treaties signed by the United States. S. 2623, the Aircraft Sabotage Act, is long overdue. For nearly a decade it has been before Congress. It implements our 1972 ratification of the Convention for Supression of Unlawful Acts Against the Safety of Civil Aviation.

A key provision of the Aircraft Sabotage Act gives the U.S. criminal courts jurisdiction over persons sabotaging aircraft, even

if a U.S. aircraft was not involved and the act was not within this country. Current U.S. law does not permit such type of prosecution.

This becomes a problem if, for example, a person destroys an aircraft other than a U.S. aircraft outside of U.S. territory, and decides to use the United States as a sanctuary. If there is no extradition treaty with the jurisdictional country, then that person may escape prosecution.

But the need for this implementing legislation goes beyond filling this gap. What we do by signing this implementing legislation is tell the international community that the United States has taken a stand against terrorism.

S. 2624 is directed against hostage taking. It implements the International Convention Against the Taking of Hostages, adopted by the United Nations in 1979 and later ratified by the Senate. In general, it amends Federal kidnaping statutes by providing broad jurisdiction over a hostage taking event. Any U.S. national who takes hostages anywhere in the world or any perpetrator who takes a U.S. national hostage could be punished by U.S. law under this bill.

It also amends the kidnaping law to allow the Attorney General in hostage taking situations to request assistance from any Federal, State, or local agency.

S. 2625 provides rewards for anyone providing information about terrorists and terrorism. It is essential, Mr. Chairman, that law enforcement obtain intelligence regarding terrorist operations. For example, in the past, we have needed to know the location where an American hostage was being held. This kind of information could be rewarded under this bill, as would information on command centers and terrorist safe houses.

Where warranted, the Attorney General could grant resident status to an alien, and, if needed, place him or her in the Marshal's Witness Protection Program.

I turn now to S. 2626. This is perhaps the most important bill of the four, Mr. Chairman. Its primary purpose is to deny terrorist groups the valuable services of American nationals, and it does so by criminalizing the act of providing certain services to terrorist groups, which could be international groups, foreign insurgencies, or foreign governments' armed forces or intelligence agencies—named by the Secretary of State and published in the Federal Register.

Mr. Chairman, we all know of the reprehensible acts committed by Ed Wilson. Both branches, the legislative and the executive, expressed a great deal of concern about the adequacy of our laws to cover his heinous activity. Although Wilson was convicted of felonies, those acts which aided international terrorism were largely not reachable by our criminal code.

It is hoped, Mr. Chairman, that this bill, S. 2626, will deny to terrorist those essential military, intelligence and other skills which Mr. Wilson was so ready to make available.

Under this bill it would be criminal to recruit American nationals to assemble booby traps, as did Mr. Wilson. It would be criminal to recruit persons as pilots for a named country's military, as did Ed Wilson. And it would be criminal to provide military training to a named country, as did Ed Wilson.

It is crucial that we send the message to international terrorists that we will no longer permit the talent of our nationals or our soil to be used to enhance their evil.

We ask speedy passage of this legislation, Mr. Chairman, and we will cooperate with your staff to work out any details or concerns that are remaining.

We would be glad to answer any questions after Mr. Gilbert is finished with his statement.

Senator DENTON. Thank you very much, Ms. Toensing.

Mr. Gilbert.

STATEMENT OF WAYNE R GILBERT

Mr. GILBERT. Mr. Chairman, members of the subcommittee, I am pleased to appear before you today to discuss the President's proposed legislative package concerning international terrorism and mainly its impact on the FBI.

Recent years reflect increasing concern both in the United States and in foreign nations over the use of terrorism by foreign governments or groups. We have seen an increased propensity on the part of terrorist entities to plan and carry out terrorist acts worldwide.

Since 1968, approximately 40 percent of all terrorist incidents that have occurred outside our borders were aimed at U.S. officials, property or civilians. During the year 1981 through 1983, there were 124 terrorist incidents within the United States, of which approximately 15 percent were directed against foreign establishments and approximately 12 percent were directed against foreign officials.

The President's proposed legislative package would provide increased jurisdiction and flexibility in addressing terrorist matters. The Hostage Taking Act would extend our jurisdiction and authority to act, where deemed appropriate, on certain terrorist-related hostage situations both within the United States and internationally.

The Aircraft Sabotage Act would extend jurisdiction over perpetrators of certain aircraft-related crimes, especially when the subjects are later found here in the United States.

Of particular interest to us is the Prohibition Against Training or Support of Terrorist Organizations Act of 1984. The inadequacies of existing law in addressing the provision of training and services to hostile foreign countries were highlighted by the investigation of former CIA agent, Edwin Paul Wilson, who provided various services to the Government of Libya.

The Wilson situation was mentioned during prior testimony before this subcommittee in September 1982. From 1976 through 1980, Wilson recruited U.S. persons to fly and maintain military aircraft for Libya, to manufacture explosive devices in Libya, and to provide basic military-type training in Libya.

Existing U.S. laws did not afford avenues for investigation and prosecution of these service-related activities. The proposed Services Act would provide the FBI with clearcut jurisdiction over these activities and would assist the FBI's efforts to inhibit activities of foreign terrorist-oriented entities by proscribing the provision of services necessary for the furtherance of these activities.

Finally, the Rewards for Information Concerning Terrorist Acts could facilitate our effort to obtain information essential for the successful resolution of criminal terrorist acts. Although authority currently exists for the payment of rewards for certain information, the proposed rewards provisions would appear to augment the FBI's ability to obtain pertinent terrorist information if used prudently.

In conclusion, the proposed legislation would enhance our ability to prevent or to pursue for prosecution terrorist acts directed at U.S. persons and interests within the United States and abroad, and terrorist activity directed at citizens of foreign countries, as well.

That completes my prepared statement, and we stand prepared to answer any questions you might have.

Senator DENTON. And without objection, the entire written prepared statements of both you, Mr. Gilbert and Ms. Toensing will be included in the record at this point.

[The prepared statements of Ms. Toensing and Mr. Gilbert follow:]

37-785 O - 84 - 4

Prepared Statement of Victoria Toensing

My name is Victoria Toensing. I am a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice. Accompanying me are Messrs. Mark Richard and Wayne Gilbert. Mr. Richard is also a Deputy Assistant Attorney General in the Criminal Division. He has long been the Division's senior person dealing with internal security and terrorism matters. As a result of a recent reorganization within the Criminal Division, I now share certain areas of responsibility for terrorism matters with him. Mr. Gilbert is with the Federal Bureau of Investigation and serves as a Deputy Assistant Director of the Bureau's Criminal Investigative Division.

It is a pleasure for us to testify on the President's anti-terrorism legislation. We believe this package will close several loopholes in existing law and give us new and needed tools to combat international terrorism. We believe that enactment of these bills is important and that speedy action upon them should be taken by the Congress. We realize how few legislative days are available, but urge that these bills be reported out of this Subcommittee.

The final legislative package will represent policy judgments by the Congress and the Executive as to how best to protect the American public against international terrorism in the coming years. As you know, during the past decade terrorist acts have become an ever increasing threat. Especially alarming is the degree to which some bandit states or organizations have engaged in heinous terrorist actions aimed at innocent victims. State supported terrorism has become a low cost method of wreaking havoc upon one's opponents. These four bills address some of the risks caused by the growing worldwide terrorism problem, especially

state-supported terrorism. The threat of terrorism is ever present, and one must ensure that our legal arsenal is sufficiently capable of responding to the problem. Our efforts must be strong, but they must also preserve the constitutional values and liberties which are so dear to our society. The President's package comports fully with these goals. We look forward to working with your Subcommittee and the other involved Congressional Committees to bring these bills to passage this session.

The focus of the President's bills is to deal with those groups, insurgents, and foreign governments who engage in acts of international terrorism directed against the interests of this nation and its people. We condemn, unequivocally, any terrorist act whether by friend or foe.

When the President transmitted his legislative package to the Congress he included a section-by-section analysis of each bill. Hence, we will not describe each bill in specific detail.

S. 2623

S. 2623, the "Aircraft Sabotage Act," is one piece of legislation long overdue. For nearly a decade it has been before the Congress in one fashion or another. The primary purpose of the bill is to implement fully the international obligations we assumed when we ratified the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation ("Montreal Convention") on November 1, 1972. A major obligation of the Convention is the requirement that Parties to the Convention assume criminal jurisdiction over persons who, having destroyed a civil aircraft, are found within their territory. Jurisdiction would apply even when the act was committed elsewhere and not against that country's aircraft. Current United States law does not permit such a prosecution. For example, under this bill, if a terrorist blows up a British airliner in Madrid, the United States would be able to prosecute him if he is apprehended in the United States.

While present domestic law meets the vast majority of our obligations under the Montreal Convention (which may explain the inertia in enacting the predecessors of S. 2623) the time is now ripe for Congressional action on this non-controversial measure. In addition to plugging the gaps in existing laws relating to our treaty responsibilities, the bill also makes several minor, but desirable, changes in the statutes relating to aircraft piracy and the destruction of aircraft offenses.

The need for passing this legislation goes beyond filling these gaps in our present law. Its passage will send an international message of the United States' commitment to combat terrorism. Our failure to implement the Montreal Convention has been an impediment to our diplomatic efforts to encourage further concerted international action against terrorism.

S. 2624

I will now discuss S. 2624, which is directed against hostage-taking. Hostage-taking is defined as kidnapping coupled with a "threat . . . to kill, injure or continue to detain the person in order to compel a third party" to act or refrain from action. As defined, the term covers hostage-taking whether or not perpetrated by terrorists.

The international community strongly condemned hostage-taking on December 17, 1979, when the International Convention Against the Taking of Hostages was adopted by the United Nations. The United States has signed the treaty, and the Senate has given its advice and consent. However, before the United States can file its formal adherence to the treaty, implementing legislation must be enacted. S. 2624 is the necessary legislation.

S. 2624 amends the current federal kidnapping statute, 18 U.S.C. 1201, to implement these treaty responsibilities fully. The bill provides broad jurisdiction over the hostage-taking offense. It is predicated on recognized

extraterritorial principles of international law to provide for punishment of any United States national who takes hostages anywhere in the world, as well as of any perpetrator who takes a United States national hostage anywhere in the world.

Of course, as you well know, before there can be any prosecution one must also obtain personal (i.e., physical) jurisdiction over the perpetrator. Most perpetrators of hostage-taking outside of the United States will and should be dealt with by the foreign government where the crime occurred. This bill is written to create United States federal jurisdiction in the event the perpetrator evades the jurisdiction of such court, or the court fails to mete out justice in vindication of our interests. Of course, we could not proceed to trial unless we obtained personal jurisdiction over the perpetrator and sufficient evidence to sustain a successful prosecution.

Where the hostage-taking occurs within the United States, the bill, while providing for federal jurisdiction where appropriate, specifically states that state and local jurisdiction is not preempted. Although the bill is not limited to hostage-taking by terrorists, in keeping with the purpose of the international Convention, we do not intend to assume jurisdiction where there is no compelling federal interest.

S. 2624 also amends current subsection (f) of 18 U.S.C. 1201 (the kidnapping law) to allow the Attorney General to request assistance in hostage-taking situations from any Federal, State or local agency notwithstanding any statute, rule, or regulation to the contrary. This authority presently exists under Section 1201 only where "internationally protected persons" are kidnapped. Like authority is also found in other federal statutes, such as 18 U.S.C. 112(f) (assaults on protected foreign officials), 351(g) (assault and kidnapping of high federal officials), and 1751(i) (assaults on or

assassination of the President and his staff), and is for use in those rare situations where the law enforcement resources normally available to the Attorney General, such as the FBI and the United States Marshals Service, are not sufficient. In keeping with the historical precedent and current practice, the request for additional assistance would normally be directed first toward civilian authorities. Only when other civilian authorities are unable to provide the necessary assistance would the request be made to the military. Requests to the military would follow the procedures already established in this area between the Secretary of Defense and the Attorney General.

S. 2625

I would now like to turn to S. 2625, the bill that provides for payment of rewards in coping with terrorism.

As you well know, the clandestine nature of terrorist activity makes it difficult to prevent or suppress. It is essential that law enforcement obtain intelligence information concerning terrorist operations. The rewards and other features of this bill will encourage law-abiding persons (especially overseas) to overcome their reluctance and fear, and reveal what they know to the authorities.

Additionally, in the past, terrorist groups were composed primarily of hard-core ideological zealots who would never have informed upon their cohorts. In recent years, however, there are indications that violent criminal types have become associated with some terrorist groups. Because of their prior criminal experiences they are more likely to talk when caught or to inform when they feel betrayed. S. 2625 provides the Secretary of State and the Attorney General a new tool to exploit this weakness, thereby hindering terrorist activity.

The reward provisions of S. 2625 are broad. They apply to terrorist activity directed at the nation's interests, people, and property anywhere in the world. The Secretary of State has

primary responsibility for rewards relating to such activity outside the United States; the Attorney General is responsible for that which occurs within the United States. The bill reaches domestic terrorism which may not be itself a federal crime and it also covers overseas terrorism over which there might be no federal criminal jurisdiction.

The size of the potential rewards creates a new risk to terrorist groups, especially when their activities involve individuals removed from the hard-core ideological center of the group. While, as a matter of policy this Department does not favor publicly announced rewards, the threat of terrorism warrants the use of any legal tool to combat it. Unlike some reward measures, S. 2625 is not limited to information leading only to the conviction or the arrest of the perpetrator. It covers all valuable information that can lead to the prevention, frustration, or favorable resolution of the terrorist's activities. For example, information on the location of an American hostage would be covered. Likewise covered is information on command centers and safe-houses of terrorist groups.

While a reward of $500,000 is possible, any reward of $100,000 or more requires the approval of the President or his designee. The bill permits the Attorney General, where warranted, to grant an alien recipient permanent resident status and to place the recipient in the Witness Protection Program operated by the United States Marshals Service. No domestic or foreign public official may receive a monetary reward for any information provided, but they, too, would be eligible for admission to the United States, if an alien, and to the Witness Protection Program, when appropriate. Because of the need to protect the identity and location of the recipients, the Secretary of State or the Attorney General is authorized to take the steps necessary to provide appropriate safeguards in the disbursement of such rewards to avoid harmful disclosures.

S. 2625 appropriates no funds, but upon its enactment both the Department of State and the Department of Justice will seek the necessary appropriation from the Congress. This statute, even if seldom utilized, may be just the means to the prevention of deadly attacks upon American nationals or to their successful rescue if they have been kidnapped.

S. 2626

S. 2626 is the most important bill in the package. Its primary purpose is to deny valuable services from American nationals to those terrorist groups which practice their terrorism against this nation's interests, people, and property. The key to understanding S. 2626 is the word "services." Current law governs the exportation of military and strategic goods and materials fairly effectively. S. 2625 will deny to terrorist groups those essential military and intelligence skills which are not forbidden them under current law, as was evident in the now infamous Wilson and Terpil matters, which Mr. Gilbert's statement discusses further.

S. 2626 is not written on a clean slate. Some things it covers can be reached to a limited extent under some existing federal law (e.g., 18 U.S.C. 959). However, none of the existing measures can be easily rewritten to reach the entire range of conduct that must be denied to terrorist groups. Let us go through some of the principal provisions.

Services denied to terrorist groups

Three types of services are prohibited to terrorist groups under S. 2626. S. 2626 does not prohibit mere association; it forbids only non-verbal action on behalf of a terrorist group. The prohibited services denied are:

(1) service in or acting in concert with,

(2) providing training in any capacity to,

(3) providing any logistical, mechanical, maintenance, or similar support service

to a terrorist group. (Proposed Section 2331(a)(1-3).)

The first category is the most broad. The phrase "service in" is easily understandable; it means that it will be a crime for an American to serve as a member of a terrorist group or the armed services of a designated country. At times, however, collaborators with such groups may not be actual members of the group; they may be advisers, volunteers, or agents. Moreover, some individuals participate in terrorist groups which are not tightly organized and their association may at times be more in the nature of affiliation. The structure of terrorist groups does not always fit easily into the conceptualizations used to describe legal entities. Accordingly, the term "act in concert with" is used to cover such participants regardless of whether they are "card carrying members."

Secondly, all forms of training for such groups (except medical) are covered. For example, how to assemble booby traps would be covered. While some training could be for apparently non-terrorist purposes, any learned skill is but a tool, that can be used for evil as well as good, depending upon the intent of the user. We should not allow some of our own nationals or our territory to be used to provide any training to any named group which intends to inflict harm on our people, property and friends.

The third class of services is actually quite limited. It includes the transporting of goods or persons (e.g., flying transport planes on behalf of a terrorist government), the repair and maintenance of equipment (e.g., helicopters used by a terrorist government in an invasion of another country) and the providing of similar support services (e.g., building a machinegun practice range). Sometimes these skills relate to the operation of military hardware for either defensive or offensive operations. Sometimes it may involve operation of civilian equipment for a military purpose. It would cover

recruitment of persons to assemble booby-traps, as Ed Wilson did for Libya.

The clear purpose of this measure is to tell terrorist groups to get persons other than skilled Americans to train them or to operate and repair their equipment. And it clearly ups the ante of the sanctions applicable against any American who willfully provides such "technical" services, thereby facilitating the actions of the terrorist group.

It must be emphasized that the target of this bill is conduct -- conduct which directly facilitates terrorist activity. The bill is not intended to reach First Amendment protected expressions of sympathy or moral support; it is not intended to reach lobbying; it is not intended to reach peaceful demonstrations or any other constitutionally protected activity. Nor is it intended to reach fund-raising on behalf of a terrorist group -- although we submit that a specific prohibition against exporting currency to aid a designated group would be valid.

We are aware of some concern that "acting in concert with" could be construed to sweep too broadly. We are perfectly willing to work with Committee staff to develop acceptable terminology that would satisfy these concerns. The services and acts forbidden are simply those kinds of physical aid and expert assistance which skilled Americans can supply, and have, regrettably, supplied to hostile terrorist enterprises.

Covered terrorist groups

The groups covered are (1) international terrorists groups, (2) foreign factions (i.e., insurgents), and (3) the armed forces (including police) and intelligence agencies of a foreign government. The prohibition on services to a foreign government is limited to assistance to the armed services and intelligence agencies as they are the ones most likely to conduct the terrorist activity. S. 2626 does not prohibit

services to the other components of the foreign government, such as the Departments of Agriculture, Energy, Education, etc., unless such components are acting as an agent for the military. If it were, the prosecutor would have to prove beyond a reasonable doubt that such agency relationship existed and that the defendant knew of it.

Determination of named groups

Services would be prohibited only to those "terrorist groups" (e.g, international terrorist groups, foreign insurgents or armed forces or intelligence agencies of a foreign government) for which the Secretary of State has published a determination in the Federal Register naming such group. This would come only after the Secretary has concluded that a pattern of acts or likely acts of international terrorism by that group seriously affects the national security, foreign relations, or the physical security of United States nationals or their property. The determination would set forth the Secretary's reasons.

S. 2626 does not break new ground in giving a high executive officer the authority to trigger criminal sanctions when in his judgment the standards set by the Congress have been met. The Arms Export Control Act (22 U.S.C. 2751 et seq.) the Export Administration Act (50 App. U.S.C. 2401 et seq.) and the International Emergencies Economic Powers Act (50 U.S.C. 1701 et seq.) are comparable examples. (See also 50 U.S.C. 205, 22 U.S.C. 2370, 22 U.S.C. 441-457, 46 U.S.C. 143, and 50 U.S.C. 21-24.) The Secretary of State is the proper official to make such a determination for the nation. The annual review feature will ensure that the determinations are current. It must be remembered that the goal of this legislation is not merely to put groups on a list, but rather to give such groups added incentives to refrain from terrorist activities directed at United States interests, people, and property. If, however, they persist in such activities, the supplying of services

should be prohibited, and American nationals who willfully continue to provide them should face strong sanctions.

Definition of terrorism

Terrorism is violent criminal conduct apparently intended (1) to intimidate or coerce a civilian population, (2) to influence the conduct of a government by intimidation or coercion, or (3) to affect the conduct of a government by assassination or kidnapping. Under S. 2626 the terrorism practice by such groups must be directed at the national security, the foreign relations, or the physical security of United States nationals or their property. Hence, this bill does not reach all international terrorism, but only that international terrorism which is directed against our own people and interests. It seems self-evident that this country should, in self-defense, attempt to deny the provision of such services by United States nationals or businesses or the use of our territory to provide such aid to those groups intending to inflict harm upon this country's people, property, and friends.

Judicial review

Proposed subsection 2331(e) provides that the Secretary of State's determination "shall be conclusive," and that "[n]o question concerning the validity of the issuance of such determination . . . may be raised by a defendant as a defense in or as an objection to any [criminal] trial or hearing . . . ." This subsection does not bar all judicial review of the Secretary's determination. Specifically, it would not bar review by the courts of "questions of interpretation and constitutionality," such as those considered in Ludecke v. Watkins, 335 U.S. 160, 163, 171 (1947). See also Estep v. United States, 327 U.S. 114, 122 (1946). Rather, what subsection 2331(e) would bar is inquiry by the courts into what is fundamentally a political decision by the Executive Branch, acting pursuant to authority delegated by Congress -- i.e., whether a particular government, faction, or group meets the

relevant congressionally established criteria for designation. This approach is entirely consistent with the approach taken by the courts in challenges brought under other analogous statutes. See, e.g., Dames & Moore v. Regan, 453 U.S. 654 (1981); United States v. Spawr Optical Research, 685 F.2d 1076 (9th Cir. 1982) (declaration of national emergency under International Emergency Economic Powers Act is political question); United States v. Moller-Butcher, 560 F. Supp. 550 (D.Mass. 1983) (authority to classify goods under the Export Administration Act is political question properly lodged in Executive Branch); cf. Estep v. United States, 327 U.S. at 114 (finality of classification decision of Selective Service Board prevents courts from weighing evidence to determine whether classification was justified). The last three cases cited are criminal prosecutions. The section, thus, properly provides that a person who has supplied the services should not be free to challenge the merits of the Secretary's determination after he has been caught. Under our Constitution and laws the government is responsible for making those difficult decisions necessary to preserve, protect and defend this nation against its enemies. The Secretary would make this determination under the authority and standards provided by Congress. Such procedure is not only constitutional but also necessary and sound public policy.

It has been suggested by some that the bill be drafted to require proof that the service furnished be related to a specific act of terrorism. We disagree. S. 2626 is drafted so that it will be possible to maintain a successful prosecution where warranted. Because most of the illicit conduct will occur outside the United States the ability to secure evidence to convict beyond a reasonable doubt would be limited. To require proof that the service provided be related to a specific terrorist act would be virtually impossible in our courts of law. Any statute having such an element would be

nugatory and worthless in the real world. Making the gist of the offense the provision of services to a named group offers the possibility of obtaining a conviction.

There are other provisions of S. 2626 that are covered more fully in the President's section-by-section analysis. We believe, however, that our testimony has covered the major features.

In conclusion, these four bills are needed by the nation. They are designed to meet contingencies that we have already confronted: terrorist destruction of civil aircraft; the taking of hostages by terrorist bands and governments to influence national policy; the need to induce the supplying of information leading to rescue of hostages through rewards and asylum; the furnishing of services by Americans that materially assisted foreign governments, foreign factions and groups in the practice of terrorism.

As previously expressed, we will work with your Subcommittee to facilitate passage of this essential legislation. We are confident that through a cooperative approach mutually agreeable language can be found to cure any perceived constitutional problems.

This concludes our prepared remarks. I believe Mr. Gilbert has a short statement after which we would be happy to answer any questions the Subcommittee may have.

Prepared Statement of Wayne R. Gilbert

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss the President's proposed legislative package concerning international terrorism, and its impact on the FBI.

Recent years reflect increasing concern, both in the United States and in foreign nations, over the use of terrorism by foreign governments or groups. We have seen an increased propensity on the part of terrorist entities to plan and carry out terrorist acts worldwide. Since 1968, approximately 40 percent of all terrorist incidents that have occurred outside our borders were aimed at United States officials, property, or civilians. During the years, 1981 through 1983, there were 124 terrorist incidents within the United States, of which approximately 15 percent were directed against foreign establishments, and approximately 12 percent were directed against foreign officials.

The FBI's role as the lead Federal agency in our fight against terrorism has received increased emphasis in the 1980's. In October, 1982, terrorism was designated as one of the FBI's four national priority programs. In January, 1983, the FBI began training a fifty man antiterrorism Hostage Rescue Team, which is capable of conducting sophisticated assault and rescue missions. Additional investigative resources have been committed to the investigation of terrorist related matters. FBI responsibilities concerning terrorism encompass both pre-emptive and reactive investigation. Pre-emptive efforts involve the collection and analysis of intelligence concerning terrorist oriented entities to facilitate the prevention of planned terrorist acts directed at the United States and its citizens. Reactive efforts involve investigation leading to successful prosecution of those

perpetrating terrorist related crimes against United States interests.

The President's proposed legislative package would provide increased jurisdiction and flexibility in addressing terrorist matters. The Act for the Prevention and Punishment of the Crime of Hostage-Taking and the Aircraft Sabotage Act would enhance the FBI's ability to investigate and pursue prosecution of activity common to terrorists. The Hostage-Taking Act would extend our jurisdiction and authority to act, where deemed appropriate, on certain terrorist related hostage situations both within the United States and internationally. The Aircraft Sabotage Act would extend jurisdiction over perpetrators of certain aircraft related crimes, especially when the subjects are later found in the United States.

Of particular interest is the Prohibition Against Training or Support of Terrorist Organizations Act of 1984. The inadequacies of existing law in addressing the provision of training and services to hostile foreign countries were highlighted by the investigation of former CIA Agent, Edwin Paul Wilson, who provided various services to the Government of Libya. The Wilson situation was mentioned during prior testimony before this Subcommittee in September, 1982. From 1976 through 1980, Wilson recruited United States persons to fly and maintain military aircraft for Libya, to manufacture explosive devices in Libya, and to provide basic military type training in Libya. Existing United States laws did not afford avenues for investigation and prosecution of these service related activities. The proposed Services Act would provide the FBI with clear-cut jurisdiction over these activities, and would assist the FBI's efforts to inhibit activities of foreign terrorist oriented entities by proscribing the provision of services necessary for the furtherance of these activities.

Finally, the Rewards for Information Concerning Terrorist Acts could facilitate our efforts to gather

information essential for the successful resolution of criminal terrorist acts. Although authority currently exists for the payment of rewards for certain information, the proposed rewards provisions would appear to augment the FBI's ability to obtain pertinent terrorist information, if used prudently.

In conclusion, proposed legislation would enhance our ability to prevent or to pursue for prosecution terrorist acts directed at United States persons and interests within the United States and abroad, and terrorist activity directed at citizens of foreign countries.

That completes my prepared statement. I would be pleased to respond to any questions.

Senator DENTON. I will open the questions. I am not sure whether my colleagues will return for questioning. They will.

You made reference, Mr. Gilbert, to the terrorist incidents. How serious, in your view, are terrorist incidents in the United States? How serious have they become? Are they increasing or decreasing in seriousness? Is that a clear trend?

Mr. GILBERT. Within the United States, there is a clear trend of a decrease in recent years. Internationally, there is definitely an increase, and I can also say they have increased in violence. The individual acts have increased greatly in violence.

Between 1973 and 1982, there were 6,500 incidents with about 38 percent of them directed at American or U.S. interests. In 1983 alone, there were approximately 500 incidents, approximately 600 deaths and 900 injuries connected with those 500 incidents, and over 50 percent of those were directed at U.S. interests.

As opposed to that, within the United States in 1982 we had 51 incidents, and 7 deaths, approximately 26 injuries, if I recall. In 1983, we had 31 incidents and 6 deaths, and 4 injuries.

So you can see there has been a substantial decrease within the United States, and we would like to think it is because of the prosecutive posture that we have taken here, and the successes we have had, in particular, against the Armenian and Puerto Rican groups.

Senator DENTON. I would like to share that view with you. I often wonder, however, if those who support from abroad and to some degree dictate the courses taken by terrorists, and I admit there are many courses taken by terrorists which are not dictated by national entities, but to the degree that they are, I would think that it would be to their advantage to keep the United States somewhat unaware, unalerted, in a posture of somnolence regarding the necessity for vigilance against terrorism. I think that had something to do with what happened to our Marines in Beirut. I believe

it has something to do with the lag in keeping up with the need in terms of international terrorism in the field of legislation.

Would you care to comment further on international terrorism? What kinds, what trends are most deserving of attention?

Mr. GILBERT. Well, in general, the Middle East concerns and the Armenian concerns are our main interest from international terrorists standpoint, and of course, the upcoming Olympics where we have no direct information, and we are confident that we are not going to have any incidents, but obviously we have to be prepared. We have to be concerned, and our sharing of information with our colleagues in other services shows that the main interest right now would be Libyan and Iranian terrorism.

Senator DENTON. I know that some of you have dealt with this, too, but would you care to make any other remarks on the question of the adequacy of existing legislation to cope with such trends in terrorism as they exist?

Wouldn't more vigorous enforcement of existing laws take care of the problem?

STATEMENT OF MARK RICHARD

Mr. RICHARD. Mr. Chairman, I do not think the cure for the problem lies with increased enforcement. I think our enforcement record is quite admirable, especially with respect to domestic terrorism.

We have, as Mr. Gilbert indicated, moved very vigorously against a variety of groups when the evidence is available and where we have prosecutive theories on which to proceed. There are gaps. I think the gaps were well documented by the Wilson types of activities that have been reported to this committee and others, and I think that our ability to deal in an enforcement mode with the problem would be enhanced by passage of the legislation before this committee.

Senator DENTON. Thank you.

What effects has our failure to date to adopt domestic legislation implementing the 1971 Montreal Convention on Aircraft Sabotage and implementing the 1979 U.N. Convention on hostage taking had on our efforts to foster greater international cooperation in combating terrorism?

Mr. RICHARD. It is obviously hard to quantify a response to your question, but I can say that while there are, I suspect, adequate laws for dealing with a variety of situations in the aircraft field, there are, nevertheless, current gaps that would be addressed by the proposed legislation.

But I think significantly our failure to move in this area, both the hostage area and the aircraft area, sends the wrong signals to our allies, to the international community with which we must work in a very close relationship, if we are going to increase and enhance our enforcement effort and capabilities in this area.

Senator DENTON. Does anyone else have any comments on that?

Ms. TOENSING. Perhaps the State Department would like to address that more fully, Mr. Chairman.

Senator DENTON. We will afford them that opportunity later in the hearings. Thank you.

Are the Soviet Union, East Germany, and other Communist bloc states signatories to the treaty? We are talking about the Montreal Convention.

What about Iran, Syria, South Yemen, and Libya?

Mr. RICHARD. Mr. Chairman, I have a list of the countries that are signatories to the agreement. I would be more than glad to submit the entire list for the record.

[The following was received for the record:]

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 7570

[Reprint of the English Text Only]

SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION (SABOTAGE)

Convention Between the
UNITED STATES OF AMERICA
and OTHER GOVERNMENTS

Done at Montreal September 23, 1971

MULTILATERAL

Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage)

Convention done at Montreal September 23, 1971;
Ratification advised by the Senate of the United States of America October 3, 1972;
Ratified by the President of the United States of America November 1, 1972;
Ratification of the United States of America deposited at Washington November 1, 1972;
Proclaimed by the President of the United States of America February 28, 1973;
Entered into force January 26, 1973.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation was signed at Montreal on September 23, 1971, a certified copy of which Convention in the English, French, Russian and Spanish languages, is hereto annexed;

The Senate of the United States of America by its resolution of October 3, 1972, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Convention, and the Convention was ratified by the President of the United States of America on November 1, 1972;

It is provided in Article 15 of the Convention that the Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to the Convention which participated in the Montreal Conference;

The date of entry into force of the Convention is January 26, 1973, instruments of ratification having been deposited by Trinidad and Tobago on February 9, 1972, South Africa on May 30, 1972, Canada on June 19, 1972, Israel on June 30, 1972, Chad on July 12, 1972, Brazil on July 24, 1972, Yugoslavia on October 2, 1972, Spain on

October 30, 1972, the United States of America on November 1, 1972, Hungary on December 27, 1972;

NOW, THEREFORE, I, Richard Nixon, President of the United States of America, proclaim and make public the Convention to the end that it shall be observed and fulfilled with good faith on and after January 26, 1973 by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-eighth day of February in the year of our Lord one thousand nine hundred
[SEAL] seventy-three and of the Independence of the United States of America the one hundred ninety-seventh.

RICHARD NIXON

By the President:
KENNETH RUSH
Acting Secretary of State

C O N V E N T I O N

FOR THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST THE SAFETY OF CIVIL AVIATION
Signed at Montreal on 23 September 1971

C O N V E N T I O N

POUR LA REPRESSION D'ACTES ILLICITES
DIRIGES CONTRE LA SECURITE DE L'AVIATION CIVILE
Signée à Montréal le 23 septembre 1971

К О Н В Е Н Ц И Я

О БОРЬБЕ С НЕЗАКОННЫМИ АКТАМИ, НАПРАВЛЕННЫМИ
ПРОТИВ БЕЗОПАСНОСТИ ГРАЖДАНСКОЙ АВИАЦИИ
Подписана в Монреале 23 сентября
1971 года

C O N V E N I O

PARA LA REPRESION DE ACTOS ILICITOS
CONTRA LA SEGURIDAD DE LA AVIACION CIVIL
Firmado en Montreal el 23 de septiembre de 1971

MONTREAL
23 September 1971

MONTREAL
23 septembre 1971

Монреаль
23 сентября
1971 года

MONTREAL
23 de septiembre de 1971

CONVENTION

FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION

The States Parties to this convention

CONSIDERING that unlawful acts against the safety of civil aviation jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

Have agreed as follows:

ARTICLE 1

1. Any person commits an offence if he unlawfully and intentionally:
   (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
   (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
   (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
   (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
   (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.
2. Any person also commits an offence if he:
   (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or
   (b) is an accomplice of a person who commits or attempts to commit any such offence.

ARTICLE 2

For the purposes of this Convention:

(a) an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarka-

tion until the moment when any such door is opened for disembarkation; in the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board;

(b) an aircraft is considered to be in service from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight as defined in paragraph (a) of this Article.

ARTICLE 3

Each Contracting State undertakes to make the offences mentioned in Article 1 punishable by severe penalties.

ARTICLE 4

1. This Convention shall not apply to aircraft used in military, customs or police services.

2. In the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall apply, irrespective of whether the aircraft is engaged in an international or domestic flight, only if:

(a) the place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of that aircraft; or

(b) the offence is committed in the territory of a State other than the State of registration of the aircraft.

3. Notwithstanding paragraph 2 of this Article, in the cases contemplated in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall also apply if the offender or the alleged offender is found in the territory of a State other than the State of registration of the aircraft.

4. With respect to the States mentioned in Article 9 and in the cases mentioned in subparagraphs (a), (b), (c) and (e) of paragraph 1 of Article 1, this Convention shall not apply if the places referred to in subparagraph (a) of paragraph 2 of this Article are situated within the territory of the same State where that State is one of those referred to in Article 9, unless the offence is committed or the offender or alleged offender is found in the territory of a State other than that State.

5. In the cases contemplated in subparagraph (d) of paragraph 1 of Article 1, this Convention shall apply only if the air navigation facilities are used in international air navigation.

6. The provisions of paragraphs 2, 3, 4 and 5 of this Article shall also apply in the cases contemplated in paragraph 2 of Article 1.

ARTICLE 5

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offences in the following cases:

(a) when the offence is committed in the territory of that State;
(b) when the offence is committed against or on board an aircraft registered in that State;
(c) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;
(d) when the offence is committed against or on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offences mentioned in Article 1, paragraph 1 (a), (b) and (c), and in Article 1, paragraph 2, in so far as that paragraph relates to those offences, in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

ARTICLE 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the States mentioned in Article 5, paragraph 1, the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

ARTICLE 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

ARTICLE 8

1. The offences shall be deemed to be included as extraditable offences in any extradition treaty existing between Contracting States. Contracting States undertake to include the offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Each of the offences shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1 (b), (c) and (d).

ARTICLE 9

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

ARTICLE 10

1. Contracting States shall, in accordance with international and national law, endeavour to take all practicable measures for the purpose of preventing the offences mentioned in Article 1.
2. When, due to the commission of one of the offences mentioned in Article 1, a flight has been delayed or interrupted, any Contracting

93-240 O - 73 - 2

State in whose territory the aircraft or passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

ARTICLE 11

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

ARTICLE 12

Any Contracting State having reason to believe that one of the offences mentioned in Article 1 will be committed shall, in accordance with its national law, furnish any relevant information in its possession to those States which it believes would be the States mentioned in Article 5, paragraph 1.

ARTICLE 13

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

(a) the circumstances of the offence;
(b) the action taken pursuant to Article 10, paragraph 2;
(c) the measures taken in relation to the offender or the alleged offender and, in particular, the results of any extradition proceedings or other legal proceedings.

ARTICLE 14

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.
3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

ARTICLE 15

1. This Convention shall be open for signature at Montreal on 23 September 1971, by States participating in the International Conference on Air Law held at Montreal from 8 to 23 September 1971 (hereinafter referred to as the Montreal Conference). After 10 October 1971, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.
2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.
3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in the Montreal Conference.
4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.
5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.
6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

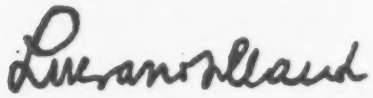
ARTICLE 16

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.
2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this twenty-third day of September, one thousand nine hundred and seventy-one, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

Certified to be a true and complete copy
Copie certifiée conforme
Es copia fiel y auténtica



[SEAL]

Legal Bureau
Direction des Affaires juridiques
Dirección de Asuntos Juridicos
ICAO OACI

Note by the Department of State

Signatures Affixed at Montreal and Washington to the United States Depositary Original of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation [1]

ARGENTINE REPUBLIC, THE

R. Temporini
O. A. Ainchil

AUSTRALIA, THE COMMONWEALTH OF

J. Plimsoll — 12 October 1972

AUSTRIA, THE REPUBLIC OF

A Halusa — 13 November 1972

BARBADOS

O H Jackman

BELGIUM, THE KINGDOM OF

A X Pirson

BRAZIL, THE FEDERATIVE REPUBLIC OF

E C Sanctos

Subject to reservation under Article 14 paragraphs 2 and 1

BULGARIA, THE PEOPLE'S REPUBLIC OF

L Geliazkov

with a reservation under p 2, article 14

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

V. I. Lukyanovich [Romanization]

"The Government of the Byelorussian Soviet Socialist Republic does not consider itself bound by the provisions of paragraph 1 of Article 14, which provides that disputes concerning the interpretation or application of the Convention shall be submitted to arbitration or to the International Court of Justice at the request of one of the Parties." [Translation]

---

[1] Opened for signature at Montreal Sept. 23, 1971; after Oct. 10, 1971, open for signature at London, Moscow, and Washington. The undated signatures were affixed at Montreal; the dated signatures were affixed at Washington.

CAMEROON, THE FEDERAL REPUBLIC OF

CANADA

André Bissonette

CEYLON

CHAD, THE REPUBLIC OF

A Aganaye

CHILE, THE REPUBLIC OF

CHINA, THE REPUBLIC OF

S. M. Kao [Romanization]

COLOMBIA, THE REPUBLIC OF

CONGO, THE PEOPLE'S REPUBLIC OF THE

F X Ollassa

COSTA RICA, THE REPUBLIC OF

Georgiana Darlington

CZECHOSLOVAK SOCIALIST REPUBLIC

B Vachata

With reservation under par. 2, Article 14

DENMARK, THE KINGDOM OF

E Bartels — October 17th – 72

EGYPT, ARAB REPUBLIC OF

ETHIOPIA, THE EMPIRE OF

G. Tuni

FINLAND, THE REPUBLIC OF

FRENCH REPUBLIC, THE

GABONESE REPUBLIC, THE

GERMANY, THE FEDERAL REPUBLIC OF

H. Groepper

HUNGARIAN PEOPLE'S REPUBLIC

Sándor, István

INDIA, THE REPUBLIC OF

L. K. Jha — December 11 1972

INDONESIA, THE REPUBLIC OF

IRELAND

ISRAEL, THE STATE OF

N. Ben-Yehuda [Romanization]
E. Ben-Yakir [Romanization]

ITALIAN REPUBLIC, THE

V Marabito

JAMAICA

K. O. Rattray
G. B. Morris

JAPAN

KENYA, THE REPUBLIC OF

KOREA, THE REPUBLIC OF

LEBANON, THE REPUBLIC OF

MALAGASY REPUBLIC, THE

MEXICAN STATES, THE UNITED

J J de Olloqui — January 25th 1973

NETHERLANDS, THE KINGDOM OF THE

W Riphagen
M R Mok

NEW ZEALAND

G D L White — September 26th 1972

NORWAY, THE KINGDOM OF

PHILIPPINES, THE REPUBLIC OF THE

P Agcaoili
L T Caday
R. Carsi Cruz

POLISH PEOPLE'S REPUBLIC

S Dabrowa

37-785 O - 84 - 6

PORTUGAL, THE REPUBLIC OF

J R Pinto-Soares

ROMANIA, SOCIALIST REPUBLIC OF

G Ionita July 10, 1972

1. "The Socialist Republic of Romania states that does not consider herself bound by the provisions of Article 14, point 1, of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971, which stipulates that the differences concerning the interpretation or the putting into force of the present Convention, which have not been settled through negociations, to be submitted to the International Court of Justice at the request of each of the parties involved.

The position of the Socialist Republic of Romania is that such differences should be submitted to the International Court of Justice only with the consent of all the parties involved, for each single case." G I

SENEGAL, THE REPUBLIC OF

Y Diallo

SOUTH AFRICA, THE REPUBLIC OF

H E M I Botha

SPAIN

SWEDEN, THE KINGDOM OF

SWISS CONFEDERATION, THE

W. Guldimann

TANZANIA, THE UNITED REPUBLIC OF

TRINIDAD AND TOBAGO

Ellis Clarke 9th February, 1972

UGANDA, THE REPUBLIC OF

UKRAINIAN SOVIET SOCIALIST REPUBLIC

I. Iliuschenko [Romanization]

The Government of the Ukrainian Soviet Socialist Republic does not consider itself bound by the provisions of paragraph 1 of Article 14, which provides that disputes concerning the interpretation or application of the Convention shall be submitted to arbitration or to the International Court of Justice at the request of one of the Parties to the dispute. [Translation]

UNION OF SOVIET SOCIALIST REPUBLICS

N. Ossetrov [Romanization]

The Government of the Union of Soviet Socialist Republics does not consider itself bound by the provisions of paragraph 1 of Article 14, which provides that disputes concerning the interpretation or application of the Convention shall be submitted to arbitration or to the International Court of Justice at the request of one of the Parties to the dispute. [Translation]

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Arnold Kean

UNITED STATES OF AMERICA

Charles Nelson Brower
Franklin Knight Willis
Robert Patrick Boyle

VENEZUELA, THE REPUBLIC OF

Ad referendum
J. Mendez

YUGOSLAVIA, THE SOCIALIST FEDERAL REPUBLIC OF

T Curuvija

ZAMBIA, THE REPUBLIC OF

LUXEMBOURG, THE GRAND DUCHY OF

Jean Wagner — le 29 novembre 1971

HAITI, THE REPUBLIC OF

R. Chalmers — 6 Janvier 1972

PANAMA, REPUBLIC OF

J Antonio de la Ossa — 18 Enero 1972

GREECE, THE KINGDOM OF

B Vitsaxis — the 9th of February 1972

MONGOLIAN PEOPLE'S REPUBLIC

M Dugersuren — 18 Feb. 1972

NIGER, THE REPUBLIC OF

O G Youssoufou — 6th March 1972

JORDAN, THE HASHEMITE KINGDOM OF	
Z Mufti	2 May, 1972
GUATEMALA, THE REPUBLIC OF	
J Asensio-Wunderlich	May 9, 1972
DOMINICAN REPUBLIC	
S. Ortiz	May 31, 1972
RWANDA, THE REPUBLIC OF	
Fidèle Nkundabagenzi	June 26, 1972
TURKEY, THE REPUBLIC OF	
Melih Esenbel	July 5, 1972
LAOS, THE KINGDOM OF	
Phéng Norindr	Nov 1st 1972
SINGAPORE, THE REPUBLIC OF	
E. S. Monteiro	21. Nov 1972
CYPRUS, THE REPUBLIC OF	
Zenon Rossides	28 Nov 1972
NICARAGUA, THE REPUBLIC OF	
Dr. Guillermo Sevilla-Sacasa	Diciembre 22 1972
PARAGUAY, THE REPUBLIC OF	
Ad referendum Miguel Solano López	Enero 23 de 1973

Mr. RICHARD. The Soviet Union, just glancing at the list, is a signatory. I do not see Iran.

Senator DENTON. Syria?

Mr. RICHARD. No.

Senator DENTON. South Yemen and Libya are the other two. I believe Cuba is a signatory and has been reasonably responsive in the aircraft hijacking field, and I would like to be corrected if that is an incorrect conclusion. Is that not correct?

Mr. RICHARD. Mr. Chairman, on the list I have before me, Cuba is not included. I am not totally confident of the accuracy and currency of the list.

Senator DENTON. And how about their behavior in terms of just that one thing, aircraft hijacking? Have they not returned people to the United States when they have been brought there?

Mr. RICHARD. I think they have been reasonably cooperative, but maybe Mr. Gilbert can better elaborate on that.

Mr. GILBERT. They have been more cooperative from the standpoint that our information indicates that the people who are hijacking aircraft to Cuba are receiving substantial sentences and are being incarcerated, and they expect the same in return from us.

Senator DENTON. I must say that when we make the point that Libyan and Iranian terrorism are the kinds that are giving us the most problem at the moment, we should not ignore the fact that in Libya a General Wolf, whose full name is Marcus Wolf, set up and acts as the chief of Libyan Intelligence.

Gen. Marcus Wolf is an intelligence official of East Germany. So although we might all agree that Qadhafi is some kind of a nut, there is nothing nutty about General Wolf.

Senator Metzenbaum, I have asked at least 10 minutes' worth of questions. May I defer to you, sir?

Senator METZENBAUM. Thank you, Mr. Chairman.

Ms. Toensing, I am concerned at the breadth of S. 2626. I have some issues to raise, but they are more minor in connection with the other three bills, and I do not think those are nearly as significant as my concerns on S. 2626.

Let's go back to the days before this Nation was a nation, and there was a fellow here by the name of George Washington, and he had a lot of compatriots who were involved in any number of activities. There was no Secretary of State, of course, at that point, but if the Secretary of State had designated George Washington and his compatriots as a terrorist organization, would that not have been possible? Would it not have fit very comfortably within the definition as provided by this bill? If not, why not?

Ms. TOENSING. Well, if we accept that reasoning, Senator, then we cannot outlaw any kind of act. That puts us in a very difficult situation. We have come a long way in our history, and there are procedures for accomplishing freedom, and that we have to look at the world as it is today.

We cannot tolerate violent attacks on our society.

Senator METZENBAUM. Well, let me ask you this. Let's assume that as of November 1984, whoever is elected President designates a Secretary of State who is not nearly as responsible as the present holder of that position. What concerns me is what are the limits on that Secretary of State?

As I read the legislation, you cannot challenge that decision at any point along the line, and to take it to the height of absurdity, that Secretary of State could designate the other political party in this country as a terrorist organization. There is no way to challenge that, and if somebody were charged under the law, that misnomer, that inappropriate designation cannot under this legislation be challenged in the courts. I have difficulty in understanding how three of you who are lawyers can be here advocating legislation that gives one person, man or woman, the ultimate authority that is not subject to question at all.

Ms. TOENSING. As a lawyer, I would like to comment, Senator Metzenbaum, that no one can ever preclude a person from walking into court on a constitutional challenge, and so one is always entitled to challenge something as unconstitutional.

I believe Mr. Richard has more information about the specifics of the procedure, and perhaps he would like to continue our answer.

Senator METZENBAUM. Well, the thing that bothers me is in subsection (e), it reads:

> No question concerning the validity of the issuance of such determination or renewal may be raised by a defendant as a defense in or as an objection to any trial or hearing if such determination or renewal was issued and published in the Federal Register in accordance with subsection (d).

Ms. TOENSING. That is saying it cannot be used as a defense in a criminal matter, Senator.

Senator METZENBAUM. I understand. What I am saying now is this man over here is charged because he aided the IRA or the antiapartheid movement in South Africa, and prior to that, the Secretary of State had designated the IRA or the antiapartheid movement as being terrorist activity.

Now, he then had sent $20 or he had given them some advice, whatever. As I read this, it says that when he is brought into court, his lawyer may not raise the issue, constitutional issue or any other issue, as a defense, and I have a great problem in understanding how we lawyers can be advocating that this Congress enact legislation that has such breadth to it.

What rights do the individuals have under the law if we should enact it as proposed?

Mr. RICHARD. Senator, may I respond?

Senator METZENBAUM. Please do.

Mr. RICHARD. Senator, let me say that this provision is analogous to other provisions in the law which have been sustained.

Senator METZENBAUM. But not having to do with constitutional rights. The other provisions have to do with property rights; is that not correct?

Mr. RICHARD. I am talking about in the course of a criminal prosecution, for example, for violating the Export Administration Act.

Senator METZENBAUM. Yes.

Mr. RICHARD. The International Emergency Economic Powers Act.

Senator METZENBAUM. All of those have to do with property rights, different constitutional liberties involved.

Mr. RICHARD. Except that these challenges arise in the context of a criminal prosecution, Senator, the same type of criminal prosecution that would arise here.

What we are saying, and the courts have recognized, is that these types of decision are not appropriate for litigation in the course of criminal prosecutions. They are essentially decisions that are best made by the Secretary of State pursuant to standards set by Congress.

Senator METZENBAUM. No. There are no standards provided for. The only standards set are those that are in this bill, and they are not very strict.

Mr. RICHARD. What I am suggesting, Senator, is that Congress, of course, can provide the kinds of standards it wishes to apply in terms of guidance to the Secretary of State for implementing this provision. What I am suggesting, here, even as currently written, we are talking about a finding, if you will, by the Secretary of State involving our national interests.

I suggest to you that it is based on a pattern of conduct. It is reviewable in the context of the legislative process. Additional safeguards in terms of additional legislative standards can be insert if, of course, the Congress wishes to do so.

Senator HATCH. Senator, would you yield for a second on that question? I just want to make a point.

I agree with you that there are no standards in the bill on this matter, and I believe that is deficient. But what I would like to ask you, Senator Metzenbaum, is if we were able to work out effective standards, would that alleviate much of your concern?

Senator METZENBAUM. I think standards would improve the situation, but I am concerned that we not become a government which permits one individual to make a determination which would affect the constitutional liberties of all people in this country and not make it possible for that determination to be challenged in the courts.

Now, I think that putting in standards would improve the legislation, but I still would not agree that any one individual should be able to make a designation of that kind which causes other people in this country to be subjected to very stringent criminal penalties and not afford those defendants who are challenged with having violated the law the right to put at issue the determination.

What we are saying is this. This country has lived through a lot of times when certain groups were off the mainstream, when certain groups were extremely unpopular. And we certainly have all lived through the period of the communism and the "Red" baiting and the various un-American activities committees and various and sundry other efforts that have been made, and certainly I do not have to mention to this body that which I mentioned earlier, and that is the whole area of McCarthyism.

Now, if a Joseph McCarthy were the Secretary of State and were making these designations, you could have all of the standards in the world written out, and it would not be very meaningful. My point is that yes, we ought to do something about terrorists, but does anybody really believe that these kinds of designations are going to help to stamp out the threat of terrorism? After all, terrorists do not really worry that much about what is written in the law? They make a law unto themselves.

Ms. TOENSING. Senator, could I explain what I believe to be the rationale? I say this as a past Federal prosecutor.

The prohibition against having this as a defense in a criminal case is so that the trier of fact is not making a decision whether the Secretary of State properly made this designation.

As Mr. Richard suggested, it is not for the jury in a criminal trial to decide this kind of important decision, but, rather, it is for the executive branch in accord with regulations or standards set out by Congress.

Senator HATCH [presiding]. Ms. Toensing, I think we have shown here that the standards really are not the problem. We may be able to solve that problem because I agree with you that there should be standards. Perhaps we can resolve the last remaining problem or at least the second problem that you have raised, that being whether any one individual should make this determination and whether we set up some sort of an organization to do so.

Senator METZENBAUM. Would it not be appropriate that there be some appeal from the designation?

Senator HATCH. Surely. There may be some things that we can work on to resolve what has been a first draft situation. That is why we are holding this hearing. I believe the Senator has raised an important point. There should be standards.

First of all, you have raised it, indicating that you would not be adverse to Congress putting standards in the bill. That is part of our responsibility, and is one of the things that will happen to this bill. It is not going to leave here without standards that, frankly, all of us find to be constitutional.

But the second issue, whether any one individual should make these determinations or not, is another issue I believe we can resolve. I do not see either of these as major impediments to creating a bill that might help resolve terrorist activity and to lead us down the path toward protecting our citizens and relationships around the world.

Senator METZENBAUM. Do you have a position as to whether or not you think this legislation could provide for some appeal from the initial determination of the Secretary of State?

Mr. RICHARD. I am a little confused. When you say "appeal," appeal to what body?

Senator METZENBAUM. I do not know. I do not know. Maybe to a court, but let's assume that they designate the Sandinistas as a terrorist group, and some who are in the Congress or some other people who oppose aid to the Contras want to challenge that designation as them being a terrorist group. They appeal that decision to the circuit court of appeals. I am not sure to whom they appeal it. I do not have any special ideas spelled out.

But my concern is with the denial of a fair hearing before being adjudicated a criminal, and that is about what this legislation does because it does not adjudicate the group as being criminal, but it says that when you work with them, you become a criminal and that you cannot challenge that.

Now, let's assume that the Secretary of State did designate the IRA, and let's assume that there are 10,000 who do not agree with that designation and they want to challenge it. As this legislation is drafted, whether or not you have the standards spelled out by Congress, the designation, once made, is locked in stone.

Now, what do you do about that? How do those people have their day in court?

Mr. RICHARD. Senator, I think possibly there is a misconception as to the thrust of the legislation. The legislation does not prohibit moral support for any group. It is neutral with respect to the membership in a particular group. What it is addressed to is nonverbal conduct dealing with services, dealing with rendering of affirmative acts in support of.

It does not reach, I believe, the kinds of constitutionally protected conduct that nobody here wishes to reach.

Senator METZENBAUM. Don't you think the phrase "it shall be unlawful for any national of the United States or any U.S. business entity to perform any of the following acts," and one is to "act in concert with," is too vague?

Now, frankly, I do not know that I am that familiar with any specific definition of this legal phrase, but "acting in concert with" seems to me to be as broad language. It seems to me that if you sign petitions, that might be acting in concert with. If you contribute $10, that might be acting in concert with. If you send a letter to the editor, that might be acting in concert with. I do not know what the phrase means. I do not know whose choice of verbiage that was.

I understand what it says when it prohibits serving in the Armed Forces or any intelligence agency of any foreign government, faction or international terrorist group. I understand that, but I do not know what "acting in concert with" means. I wonder if you would be good enough to explain that to me.

Mr. RICHARD. Senator, as you indicated, I believe that we are in accord with respect to the behavior that we are not trying to reach. We are not trying to reach support of a particular group or speech in support of a particular organization. Nor are we trying to reach marching and parades in support of one; nor does this language attempt to reach contributions to a given organization.

What I suggest to you is that the language may have to be sharpened. Alternative phraseology may have to be devised in order to reach and make clear that what we are attempting to reach is affirmative acts, providing of services to these designated groups and hostile nations, and nothing more than that.

I suspect that we would be able to come up with alternative language which might address your concerns. But I assure you that in regard to the kinds of behavior and activities that trouble you, it is not our intent to reach those kinds of activities.

Senator METZENBAUM. Mr. Chairman, I have taken more than my 10 minutes, but Senator Hatch helped me use up my time. I am going to excuse myself, but I do appreciate the opportunity to work with you and to inquire of the witnesses today.

Thank you.

Senator DENTON. Senator Metzenbaum, before you depart, I wish you to be aware of my own concern about the same genre of questions you had here, and I am sure Senator Hatch has had the same interest. I hope the administration would consider changes, such as those that might require the Secretary of State to consult with Congress before making his determination, and if you care to com-

ment on that, please do so, but then I would turn it over to my distinguished colleague from Utah.

Mr. RICHARD. Mr. Chairman, we would be more than glad to work with you and your staff. We have no objections to devising an appropriate consulting mechanism so that designations would only be done after due consultation with appropriate bodies of Congress.

Senator DENTON. Senator Hatch.

Senator HATCH. Thank you, Mr. Chairman.

Am I correct in interpreting in S. 2626 the issues that Senator Metzenbaum has raised to be applicable only to countries and organizations, rather than individuals, or do these determinations by the Secretary of State apply to individuals as well?

Ms. TOENSING. It is my understanding that it applies to organizations.

Senator HATCH. And countries?

Ms. TOENSING. Yes, if they be deemed terrorist countries.

Senator HATCH. So the bill itself does not apply to individuals?

Ms. TOENSING. No, Senator.

Senator HATCH. I was going to raise the same issue concerning standards. I would suggest, since we have had this discussion, that it would be very important for us on this committee to receive your best recommendations with regard to what you think the standards should be that we, as Members of Congress or certainly members of this Judiciary Committee, should put into S. 2626 or any other bill that you feel we have to put standards into.

Also, are there presently any other statutes that would resolve some of the conflicts and difficulties you see being resolved by S. 2626? Do you know of any other statutes, or is this absolutely critical to resolve some of these problems?

Ms. TOENSING. There is some legislation, but none of it really fits, as we found out during the Ed Wilson days. Perhaps you would like to go into it more with Mr. Richard.

But, Senator, if you will permit me to clarify the record. You were asking whether this bill applies to individuals or organizations. I want to make sure that the record reflects that in talking about named terrorist groups, that is what we are referring to, but certainly as to potential defendants, it could be individuals. I did not want to mislead on the record.

Senator HATCH. Surely. Section 2331(e) seems to imply that the Secretary's designation may not be challenged in a criminal trial. As I read that section, however, I read it to allow a challenge under the Administrative Procedures Act to any such designation as an "abuse of discretion."

Is my reading correct with regard to that?

Mr. RICHARD. The provision of the act is directed to a challenge in the course of a criminal prosecution.

Senator HATCH. Right, but I do not see the criminal trial challenge to it.

Mr. RICHARD. That is correct. The proposed legislation would preclude the challenge in the context of a criminal prosecution.

Senator HATCH. Well, what about the Administrative Procedures Act?

Mr. RICHARD. It is silent as to the ability of any party to seek relief in any other forum. It would not expand or contract or take away anyone's ability to litigate any of the constitutional issues.

Senator HATCH. But it certainly means redress under and pursuant to the Administrative Procedures Act, or does it?

Mr. RICHARD. Let me just say, Senator, that to the extent that one has the ability under the APA to challenge any executive branch decision, it does not preclude that. Given the setting, I am reluctant to say categorically it would not provide it.

Senator HATCH. It does not specifically provide it, either.

Mr. RICHARD. That is correct.

Senator HATCH. But I would think that it would not be precluded and would, in fact, be a remedy that would answer some of Senator Metzenbaum's concerns.

Mr. RICHARD. If you would permit, Senator, I would be more than glad to submit a formal response to that question.

Senator HATCH. I would like to have that because I do believe that those concerns are well put. You realize, like all new legislation, that is why we hold these hearings, so that we can resolve some of these conflicts. I think Senator Metzenbaum has done the committee a service in mentioning these things. Had he not done so, I would have done so.

Let me just ask a couple of other questions. What are your claims for this package of legislation? If this package is fully enacted into law, will there be any substantial gap in legal tools available to the government in combating terrorism, or will these four bills actually help us resolve any gap problems?

In other words, do you perceive this package as the first step toward a more comprehensive antiterrorist legislative package, or will this package accord you maximum legal authority to effectively deal with these problems?

Ms. TOENSING. We feel that it will be very effective, Senator. We do not have a crystal ball. Perhaps somebody will think of a new way to do something that is terrorist and when we look at the laws available, we will not be able to cover it. But as we have studied our problems, this takes care of a great deal of them.

Senator HATCH. Do you see any necessary conflict between effective legislation to combat domestic and international terrorism and the requirements of the Bill of Rights, for instance? Do you see any conflicts here or difficulties, other than the ones which we have raised, which we will correct with your help?

Mr. RICHARD. Well, certainly to the extent that we have picked them up, we have certainly tried to address them and would be more than glad to work with the committee in addressing any other concerns.

Senator HATCH. Well, let me put it another way. Does the Constitution itself preclude any truly effective antiterrorist measures, in your opinions?

Mr. RICHARD. No. As the chairman said, the Constitution is not a suicide pact, and it does permit us to take effective action against this problem.

Senator HATCH. If I look at the language in S. 2624 correctly, I see considerable potential for the expansion of Federal jurisdiction

over kidnaping cases that by no fair reading constitute exercises in what many of us think as organized terrorism.

Is it the intent of the Department that the expanded jurisdiction provided in this law be applied only to terrorist activities, or that it also be available to Federal authorities investigating what I believe can only be referred to as a more garden variety of kidnaping? Have the Attorneys General of the United States indicated any position on this legislation on this point?

Mr. RICHARD. Senator, this provision in S. 2624 certainly provides us with additional jurisdiction, but it is concurrent jurisdiction with the State and local authorities. We would anticipate that it would only be exercised when there is a strong Federal interest arising in the context of the factual situation confronting the FBI at the moment.

Mr. Gilbert may wish to expand upon that.

Mr. GILBERT. It would be used in very, very rare instances and generally from the terrorist standpoint. We can foresee instances like nonprotected foreign nationals being involved in a hostage situation at the U.N. liquor store in New York. They are in buying something; they are caught up in a hostage situation; it rises to an international incident level. In that event, I think it would be prudent with the Federal interest for the Bureau to become involved in that type of case, but that would be the type of case domestically we would be talking about.

Senator HATCH. How significant is this change in S. 2624? Does the present requirement that the kidnaping involve the crossing of interstate borders really provide a significant impediment to the FBI in most cases of terrorist activity?

Do you need this expansion, is what I am asking.

Mr. GILBERT. It would be very helpful certainly. Twenty-four hours makes a big difference in a hostage situation.

Senator HATCH. Let me ask a similar question about S. 2623 relating to aircraft hijacking. While I am sympathetic to the provisions of this particular bill, I am unclear as to what precisely are the shortcomings of present law. Are Federal officials genuinely handicapped in their efforts to prevent aircraft hijackings or sabotage as a result of deficiencies in the present law?

Do you feel you have to have this bill?

Mr. RICHARD. There are perceived gaps in existing legislation in this area, although I would not want to overstate the significance of those gaps, Senator. The most important one from my perspective as a prosecutor is that it would enable us to prosecute an offender who committed the act abroad and enters this country. We would have an opportunity and jurisdiction to prosecute him, assuming we have the evidence. I think that is one of the most significant aspects.

Second, in order of ranking, I think the assaults on passengers, as opposed to flight crew, where they endanger the flight itself, is a significant one. It is easy to visualize a situation where assaults on passengers may very well jeopardize the flight. This is not currently covered by existing legislation.

So I think this legislation covers significant points. I do not want to overstate it, but it is, nevertheless, filling gaps.

Senator HATCH. I would like to have you submit answers to these additional points, and would appreciate your being more definitive on some of these issues. You have raised some good illustrations in each of these questions that I have asked, and would like you to be even more definitive because I believe it important that we have as much backing for that as we can before we amend the laws in these areas where there are serious questions about whether or not constitutional protections might be violated or might be ignored. I would appreciate having any additional information you can send to us on that.

Let me just ask one question about S. 2625. This relates to rewards for information relating to terrorists. In your estimate, Ms. Toensing, approximately how large a fund would you really have to have, or how large a fund is the Department contemplating here to be used for these types of purposes?

Is there absolutely no present means of doing this without this legislation under present law?

Ms. TOENSING. I believe that our funds are presently very limited in the amount that we can give in this kind of a situation, but I would like Mr. Richard to answer that more fully because he has worked with this legislation for a couple of years.

Mr. RICHARD. Senator, we have not addressed precisely the question of how much funding we anticipate would be required if this legislation was passed.

Senator HATCH. I believe you had 6,500 incidents of terrorism over the past 10 years, using a narrow definition of terrorism, about half of which were directed against U.S. citizens or embassies or U.S. property.

Mr. RICHARD. As you know, generally we do not favor rewards across the board.

Senator HATCH. However, you do favor informants. You do favor people who can help put you on the trail of these problems in advance.

Mr. RICHARD. We do favor receiving necessary information, Senator, from whatever source we can obtain it. In the context of terrorism, we think that in selected instances this type of authority and ability would enable us to receive information that might not otherwise be available.

It is broader than our current reward authority. It is not keyed just to fugitives, to apprehending fugitives. It is not keyed just to securing convictions, arrests, and what have you. It enables us to pay rewards to prevent incidents, to frustrate incidents, even though it may not ultimately lead to prosecution. So it is broader than existing authorities that are currently available to the Department.

Senator HATCH. Let me just ask one or two more questions. Our chairman is back, and he may have some additional ones.

You are going to provide us with what you think the standards should be in S. 2626. I would like to also have your best advice as to whether or not you feel that the determining person has to be the Secretary of State, or whether we should have some sort of cabinet level group.

I share some of Senator Metzenbaum's concerns that perhaps this type of determination should not be placed in the hands of any

one person who may or may not turn out to be the best type of a person to handle these types of activities.

I would like to have any alternatives you feel would be acceptable to you and to the administration, submitted to the Justice Department.

Mr. RICHARD. I would be glad to.

Senator HATCH. I would like to have just one more answer to a question that I have with regard to whether or not individuals are covered by S. 2626. You use the term "faction" in this context. Just what is meant by faction and could that mean individuals?

If you are including individuals, perhaps Senator Metzenbaum's concerns should be even more pronounced or justified. What do you mean by faction?

Mr. RICHARD. As I appreciate it from my colleagues from the State Department, faction generally connotes a greater form of recognition, if you will, to suggest an insurgency that has some international standing. For example——

Senator HATCH. International standards or international standing recognition?

Mr. RICHARD. Standing. A certain amount of recognition. It is something more than just a loose group which is referred to as a terrorist group. A faction involves situations where there is an insurrection, and there is a challenge directly to the Government. You frequently find them with uniforms. The rules of war would apply, and what have you. I think that is the generally accepted connotation in international circles of the term "faction."

Senator HATCH. Well, I think that is a nebulous term. I believe we ought to try to define that term within the legislation. You might want to give us your best recommendations with regard to that.

We may ignore all of these recommendations, but at least we will have them. They should be part of our deliberative process.

I commend you folks for trying to do something positive about the increasing terrorism in this country, a problem which is in epidemic proportions elsewhere in the world. I believe if we take the right actions now and approach these issues in an intelligent manner, we may be able to prevent an awful lot of future terrorism in this country.

Our people should not have to live with that type of activity in this country, but we see it on the increase. Of course, we in Congress have seen quite a bit of evidence of this fact over the last couple of years.

So I just want to personally compliment you for being willing to do something like standing up and trying to clarify the laws with regard to some of these areas. Hopefully, your efforts will be in the best interest of all of the citizens of this country. I am very grateful to you.

But let's work together to see if we can resolve any problems. Hopefully, the true civil libertarians out there will understand that liberty involves everybody's freedoms, not just those who commit crimes. I believe we ought to worry a little bit about the victims once in a while.

Senator DENTON. Thank you, Senator.

Senator HATCH. Thank you, Mr. Chairman.

Senator DENTON. Mr. Lisker and I have had a long series of experiences dealing with the understandable and inevitable problems of jurisdiction, you might say, "turf," that refer to the FBI and the Los Angeles Police Department deriving from the preview of what might happen at the Olympics. In other words, who gets jurisdiction over what, and how is that determined?

I believe we have made great progress and perhaps have solved it to the degree that is possible. In the bills we are discussing, Section 388 of S. 2624 states, in pertinent part, that:

> Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State.

Meaning any State of the United States,

> From exercising jurisdiction on any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving the State of responsibilities for prosecuting acts that may be violations of this section and that are violations of State and local law.

By what mechanism would the United States assert its jurisdiction? What leads you to believe that a State prosecutor will, in any case, permit this to happen if they are permitted to go ahead and exercise jurisdiction? Is there not a problem of double jeopardy if the United States asserts its jurisdiction?

How would you address that?

Mr. RICHARD. Senator, let me take the last question first, and that is the double jeopardy question. All we are talking about here is providing concurrent jurisdiction, and we have a whole host of concurrent jurisdiction offenses. The cases are quite clear that there are no major double jeopardy barriers to proceeding in both jurisdictions, the Federal and the State, although by policy the Department generally looks with disfavor at a seriatim Federal prosecution following a State prosecution predicated on the same act unless there is compelling Federal interest in the matter.

So the double jeopardy concern, I suggest, is not a major problem in this context.

As far as the method of coordinating or dealing with State and local authorities, this is not a unique problem confined just to this area. It is no different than the need for coordination that goes on daily on a host of offenses from bank robberies to narcotics activities, and what have you. It calls for close coordination between Federal and State and local investigators.

Mr. Gilbert may wish to comment further on it.

Mr. GILBERT. I think the worst-case scenario in recent years has been the portrayed dispute between the Bureau and the LAPD over an incident in Los Angeles. I think it has been overdone, quite frankly.

Chief Gates has assured, as would any major chief of police in this country, that if the international interest, the Federal interest arises, they obviously would give way, and it is not going to be done alone, by the Bureau alone. It is going to be a joint operation. It always will be and always has been a joint operation with locals to resolve the situation.

Senator DENTON. Mr. Gilbert, I tend to agree with you that the problem has been overdone. However, I think we would both agree that in its early stages, it was a very emotional, even at times hot-

tempered kind of discourse which addressed the question, and it did end up requiring a memorandum of understanding between the Department of Justice and the hundreds of local prosecutors out there, particularly the LAPD.

Do you envisage this or does any one of the three of you envisage this as requiring a memorandum of understanding or something that substitutes for that in more clarified language?

Mr. RICHARD. Mr. Chairman, my reaction would be to avoid putting in the legislation specific restrictions in this area. I would suggest leaving it for the FBI to work out flexible arrangements with the State and local authorities for the exercise of this jurisdiction along the lines that they have done in other concurrent jurisdiction offenses.

Senator DENTON. Before going any further, I want to assure the three of you that I regret what I consider to be the tardiness of presentation in this legislative year of these proposals, because, as you know, we are looking at a wild June and two conventions, and we are overdue with this legislation. With that reservation having been expressed, I do think that within human limits, we have made an excellent first cut at some much needed legislation addressing the problem of terrorism.

So I do not want you to think that I am condescendingly regarding what you have given us. I think we all have agreed that S. 2626 may require some further polish, and there may be some other questions that I feel will come up on that.

Let me move here to S. 2625. It seems to provide what some might call "backdoor" relief from the Freedom of Information Act and the Privacy Act by specifically making the provisions of those acts and the Administrative Procedures Act inapplicable to this piece of legislation.

There are those who become agitated about what they regard as a continuing chipping away at the Freedom of Information Act by Congress. Could you express why you think it is necessary to have the FOIA, the Privacy Act and the Administrative Procedures Act not apply to this measure?

Mr. RICHARD. Senator, let me just say the nature of the bill makes our reasoning patently clear. Our concern is with the security of the recipient and his or her family. There are great security concerns surrounding obtaining of information, pledges of confidentiality, and the like being given to the recipient. These are necessary if we are going to encourage people to be willing to come forward, frequently at great risk to themselves and their families. We must be in a position to protect this information.

Senator DENTON. Also in S. 2625, in addition to the payment of rewards of up to half a million dollars, there is also permitted participation in the Attorney General's Witness Security Program. How much do you anticipate that part of the program costing on an annual basis?

Mr. RICHARD. Senator, I must confess we have not addressed that. I would venture to say that I do not anticipate a great volume of people having to enter the program, but the annual cost I can only guess at this point.

Senator DENTON. Is it clear in your minds who decides when the Attorney General or the Secretary of State is to pay the reward?

Mr. RICHARD. Well, certainly the procedures for making the decision whether the situation at hand warrants the reward, how much and how it should be paid, those kinds of decisions and the procedures for making the decisions have yet to be addressed and developed.

I would venture to guess a good starting point for us in considering this issue would probably be something similar to what the Department of Justice has set up in the analogous area of providing rewards for those who provide us with information regarding special nuclear materials, and the procedures there involve the establishment of a Department of Justice committee which makes recommendations directly to the Attorney General.

Senator DENTON. Would you say that a main thrust of these bills is designed to assist the United States to obtain information concerning planned terrorist activities for the United States in advance of such activities overseas?

Mr. RICHARD. Certainly it envisions an ability to obtain information which will lead us to frustrate and prevent terrorist activities, as well as information after the fact, after the event has taken place.

Senator DENTON. Should we be complacent if we pass these bills that we have done enough regarding improvement of the flow of information in this regard; and if not, what do you have in mind for the future?

Mr. RICHARD. Well, I am sure Mr. Gilbert can address that in terms of the FBI. It appears to me that one of the cardinal principles operating in this area is the need for close coordination with foreign governments and their appropriate intelligence and law enforcement agencies. We are going to have to improve our performance in that area, as well as in the actual prosecution and investigation areas.

We have also been moving aggressively to insure that our extradition treaties and our mutual assistance treaties are adequate to address problems in this area, as well as others. It is one thing to know who the terrorists are. It is another thing getting the evidence and being able to prosecute them, even assuming you have physical jurisdiction over them.

Frequently the evidence is scattered worldwide. Our ability to secure the evidence is limited by the extent of cooperation we can get from foreign nations. There are other dimensions to the problem that I do not suspect can be purely addressed in a legislative arena.

Mr. GILBERT. I agree with Mr. Richard that this is not the answer to all questions; that it is a giant step forward, particularly some of the side effects that will occur particularly in our cooperation with our allies' foreign agencies. If we can pay rewards, they benefit from it also.

Just as an example, if you get a hostage situation overseas that can be resolved similar to the Dozier incident where a substantial reward or relocation of a key witness to the United States can take place, it benefits both agencies and international cooperation.

Senator DENTON. It is my impression that there is an inhibition on the part of intelligence agencies of nations overseas to impart information to the CIA because of the potential use of the Freedom

37-785 O - 84 - 7

of Information Act to respond to questions, the answers resulting in blowing the cover on somebody or perhaps blowing the heads off of a number of people, interfering with espionage, counterespionage on the part of their intelligence agencies.

We have prepared a bill which has had one hearing in the Subcommittee on the Constitution, which would exempt as RICO has organized crime. They have been exempted from the FOIA requirements. We feel that this field of terrorism should have the same exemption.

Do you tend to agree with that?

Ms. TOENSING. I would certainly welcome it, Senator, on the basis that, if nothing else, it sends a message to people interested in providing information that this is exempt, and so they do not have to have the fears that we hear so often from the intelligence agencies that there is a problem about getting information.

Senator DENTON. You, Ms. Toensing, would have been in a position to be personally aware of that in your former position over here on the Select Committee, and it is something that has become evident to me, not only by being invited to the meetings of the committee, but also it has been personally expressed to me for many years by members of those intelligence agencies.

We will be submitting other questions to you all in writing and will ask for your prompt answers. I think you have been extremely forthcoming, candid, reasonable in your answers, and we will have another hearing tomorrow on these bills.

The witnesses for tomorrow's hearings will be Willard DePree, Acting Under Secretary of State for Management from the Department of State; Terrell Arnold, Deputy Director of the Office for Combating Terrorism of the Department of State; Daniel McGovern, Principal Deputy Legal Advisor of the Department of State; James E. Landry, vice president and general counsel of the Air Transport Association; Richard F. Lally, director of security for the Air Transport Association; Jerry Berman of the American Civil Liberties Union; and Joseph Hassett of Hogan & Hartson on behalf of the American Civil Liberties Union. And we will have a representative of the Airline Pilots Association.

I want to thank again the three of you this morning and congratulate you on your testimony and on your work on these bills, and thank everyone here for their interest.

This hearing stands adjourned.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned, to reconvene on Wednesday, June 6, 1984.]

LEGISLATIVE INITIATIVES TO CURB DOMESTIC AND INTERNATIONAL TERRORISM

WEDNESDAY, JUNE 6, 1984

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room SD–226, Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Also present: Senator Leahy.

Staff present: Joel S. Lisker, chief counsel and staff director; Gerald Everett, congressional fellow; John Podesta, minority chief counsel; and Carole Jansen, secretary.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Good morning. This hearing will come to order.

We welcome everyone to the second day in a series of 3 days of hearings that the subcommittee is holding on a number of bills aimed at combating domestic and international terrorism.

This morning, we will continue the hearings begun yesterday on S. 2623, S. 2624, S. 2625, and S. 2626, which comprise the administration's antiterrorism package that Senator Thurmond and I introduced at the President's request last month.

We have a number of witnesses this morning, both from the Department of State and the private sector.

Our first witness this morning is Acting Undersecretary of State for Management, Willard DePree. He will be accompanied by Terrell Arnold, Deputy Director of the Office for Combating Terrorism at the State Department, and by the State Department's Principal Deputy Legal Adviser, Daniel McGovern, as well as by Mr. Geoff Levitt, of the Department of State.

The witnesses from the State Department will be followed by a panel comprised of Mr. James Landry, vice president and general counsel of the Air Transport Association, accompanied by his director of security, Mr. Richard Lally; and Capt. Thomas Ashwood, vice president of the Airline Pilots' Association. That panel will address only S. 2623, the Aircraft Sabotage Act.

They will be followed by a panel comprised of Mr. Jerry Berman of the American Civil Liberties Union and Mr. Joseph Hassett of Hogan & Hartson, a local law firm of considerable repute. Messrs. Berman and Hassett will address all four bills in the President's package.

I want to welcome all the witnesses and all those in the audience.

Before asking Mr. DePree if he has an opening statement, I want to announce that we are expecting, again, several other Senators today. Yesterday, we had Senator Hatch, Senator Metzenbaum, and we are expecting again Senator Hatch, and Senator Leahy is expected to come.

So, if you will proceed, Mr. Secretary.

STATEMENT OF HON. WILLARD DePREE, ACTING UNDERSECRETARY OF STATE FOR MANAGEMENT, DEPARTMENT OF STATE, ACCOMPANIED BY TERRELL ARNOLD, DEPUTY DIRECTOR, OFFICE FOR COUNTER-TERRORISM AND EMERGENCY PLANNING; DANIEL McGOVERN, PRINCIPAL DEPUTY LEGAL ADVISER, AND GEOFFREY LEVITT, OFFICE OF LEGAL ADVISER

Mr. DEPREE. Thank you, Mr. Chairman.

I do have an opening statement.

Mr. Chairman, thank you for the opportunity to appear today before your subcommittee to speak on the important subject of international terrorism, and specifically on the package of legislative initiatives that the administration has developed to combat this international threat.

Over the past few years, we have faced a continuing high number of increasingly violent terrorist attacks. The threat has broadened because of the ease and frequency with which terrorists can cross international boundaries to mount their attacks. As we have seen in the Middle East, terrorists often choose as targets the diplomatic or other official premises of third countries.

A major reason for this escalation has been the increased use or support of terrorism by certain states to promote their own policy goals. State support for terrorism increases the area in which terrorists can operate, gives them better logistics, provides access to more and better weapons, increases the number of potential targets, heightens the prospect that the terrorists will escape, and in general, raises their chances of success. These kinds of help obviously increase the danger of terrorist attacks.

Recently, we have devoted much attention to this problem, and have developed a number of approaches to combat it. Enhanced security measures and cooperation with friendly governments are prominent among these approaches. Today, however, I will focus on the aspect of combating terrorism that is embodied in the antiterrorism legislative package, consisting of four bills, that is currently before the Congress.

I would like to begin with the bill we consider most important, the Prohibition Against the Training or Support of Terrorist Organizations Act of 1984, S. 2626, and discuss some of the concerns that led us toward legislation of this type.

Current laws provide us with various means of reducing commerce with hostile governments. We have used the Export Administration Act to monitor and restrict the flow of certain goods. We have used the international traffic in arms regulations under the authority of the Arms Export Control Act to restrict the flow of weapons to such governments. Those laws and regulations help to

control this flow, but the rise in State-directed and State-supported terrorism has increased the ways in which a range of service activities can also contribute to the effectiveness of terrorist groups.

Right now, a U.S. individual or firm can provide many services that lend important support to acts of terrorists abroad without necessarily violating any U.S. law. Examples of such services would include maintaining or serving as a crew member of a ship or aircraft, weapons assembly or design, or technical services such as signals intelligence, document alteration, or cartography.

To fill this serious gap in our laws, the administration has developed the "Prohibitions on Training and Support Act of 1984" as a means to supplement the authority of the Export Administration Act and the ITAR regulations.

Before any prosecution of a person for providing services to a foreign group or State could take place under the proposed law, the Secretary of State would be required to make a determination that the acts or likely acts of international terrorism of the foreign group or state in question are such that the U.S. national security, foreign relations, or the physical security of the person or property of a U.S. private entity, warrant a ban on that group's or state's receipt of the types of services specified in the bill.

As is already the case with determinations made under the Fenwick amendment to the Export Administration Act, any decision under the authority of the proposed legislation would be taken in close consultation with other interested agencies of Government and in the light of clear evidence that a pattern of terrorist activities exists. Once that determination is made, it would be illegal for a U.S. individual or firm to provide training and support services to the armed forces or the intelligence services of the designated state or to the designated group.

This bill was developed over many months with the full participation of interested executive branch agencies. We believe that its overall approach is effective and that the bill is strongly deserving of passage. Its enactment would be a substantial contribution to the effort to combat terrorism. We are confident that any concerns that have arisen as a result of specific provisions of the bill can be resolved in the legislative process.

The second bill before you, the act for Rewards for Information Concerning Terrorist Acts, S. 2625, authorizes payment of rewards for information on international terrorist incidents. It provides authority to the Secretary of State in cases of terrorism abroad, and to the Attorney General in cases of domestic terrorism, to pay rewards of up to $500,000 to any individual who furnishes information leading to the arrest or conviction of terrorists who act against U.S. persons or property, or to the prevention or favorable resolution of such an act of terrorism. Rewards of over $100,000 cannot be made without the approval of the President or his designee. The Attorney General has authority on the books now to pay rewards in cases involving a violation of U.S. law, but in most cases terrorist acts outside the United States would not come under this authority.

In addition, this existing authority is limited in amount to only $25,000. The administration believes that the proposed new authority can help resolve terrorist incidents, free hostages, or bring the

perpetrators of terrorist acts to justice. We cannot say in advance which cases, or how many, might be responsive to use of this authority, but it is viewed as another helpful instrument in the fight against terrorism.

The third bill, the Aircraft Sabotage Act, S. 2623, provides implementing authority for the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, adopted at Montreal in 1971 and ratified by the United States in 1972. Implementing legislation for this convention has been before the Congress previously, but was not enacted. This legislation would extend Federal criminal jurisdiction extraterritorially, in accordance with the convention's requirements over certain acts dangerous to civil aviation, such as setting fire to, damaging or destroying an aircraft or air navigation facility; placing a destructive device on an aircraft or appurtenant structures; performing an act of violence against or incapacitating an individual on board an aircraft, if such act is likely to endanger the safety of the aircraft; and knowingly communicating false information that endangers the safety of an aircraft in flight.

The enactment of this legislation will provide a significant demonstration of the commitment of the United States to the international community's struggle against the threat of aircraft sabotage in particular and international terrorism in general, and will fulfill U.S. obligations under the Aircraft Sabotage Convention.

The fourth bill, the Act for the Prevention and Punishment of the Crime of Hostage-Taking, S. 2624, provides implementing authority for the International Convention Against the Taking of Hostages, which was adopted at the United Nations in 1979.

The Senate gave its advice and consent to ratification in July 1981, and the President signed the instrument of ratification in September 1981. Deposit of the instrument with the United Nations, which will bring the Convention into force for the United States, has been delayed pending the passage of implementing legislation that would fulfill U.S. obligations under the convention.

The bill amends the Federal kidnaping statute by extending Federal jurisdiction to any kidnaping in which a threat is made to kill, injure, or continue to detain the kidnaped person in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the person. Enactment of this bill will permit the United States to become a full party to an important international convention aimed at combatting a particularly heinous form of international terrorism, and as with the Aircraft Sabotage Act, will demonstrate to the international community the seriousness of the United States in combatting terrorism.

In conclusion, I would like to reiterate that, as President Reagan indicated in his message to Congress transmiting these four bills, the administration considers this legislation an extraordinarily important step in our war against terrorism, one that will send a powerful message to friend and foe alike that the United States will not tolerate terrorist activity against its citizens or within its borders. We believe its passage to be strongly in the national interest.

Thank you, Mr. Chairman. As you mentioned, here with me today are Daniel McGovern, the Principal Deputy Legal Adviser in the Department of State; Terrell Arnold, Deputy Director of the Office for Counter-Terrorism and Emergency Planning, and Geoffrey Levitt, of the Office of the Legal Adviser.

My colleagues and I are ready to answer your questions.

Senator DENTON. Thank you, Mr. Secretary, and welcome again, gentlemen.

I want to acknowledge and welcome my distinguished colleague and friend from Vermont, Senator Leahy, who has been doing a lot of traveling, and offer him the opportunity to make any comments he cares to at this stage.

Senator LEAHY. Mr. Chairman, I appreciate that. I do have a statement, but rather than hold things up, I wonder if I just might put it in the record, at the appropriate place.

Senator DENTON. Absolutely. Without objection, Senator Leahy's prepared statement will be entered in the record.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

BATTLING INTERNATIONAL TERRORISM IS THE CONCERN OF EVERY MEMBER OF CONGRESS AND EVERY AMERICAN. THE FOUR BILLS SUBMITTED BY THE ADMINISTRATION ARE AIMED AT THIS THREAT, AND THEIR SUBMISSION HAS SERVED A REAL PURPOSE IN FOCUSING OUR ATTENTION OF THE HARD ISSUES THAT ACCOMPANY ANY ATTEMPT TO PUT INTO LAW THE WISH WE ALL SHARE: THE ELIMINATION OF INTERNATIONAL TERRORISM AS A THREAT TO PEACE AND STABILITY IN THE WORLD.

EACH OF THE BILLS BEFORE US PRESENTS SOME NAGGING PROBLEMS, BUT THE ONE THAT RAISES THE MOST SERIOUS AND FAR-RANGING ISSUES IS S.2626, THE "PROHIBITION AGAINST THE TRAINING OR SUPPORT OF TERRORIST ORGANIZATIONS ACT OF 1984."

IT IS PROBABLY TRUE THAT IF WE SEARCH THE STATUTE BOOKS WE CAN FIND ANTECEDANTS IN OTHER LAWS, TO EVERY PHRASE IN THIS BILL. THE ADMINISTRATION WITNESSES WHO WILL TESTIFY TODAY WILL COMPARE THE WIDE POWERS OF THE SECRETARY OF STATE TO CONCLUSIVELY IDENTIFY TERRORIST GROUPS, WHICH INCLUDE THE ARMED FORCES OR INTELLIGENCE AGENCIES OF FOREIGN GOVERNMENTS, WITH SIMILAR POWERS UNDER THE ARMS EXPORT CONTROL ACT, THE EXPORT ADMINISTRATION ACT, AND THE INTERNATIONAL EMERGENCIES ECONOMIC POWERS ACT.

BUT NOT ONE OF THOSE STATUTES COMES COMES CLOSE TO MATCHING S.2626 IN IDENTIFYING AS THE EVIL TO BE CRIMINALIZED ACTIONS THAT ARE, IN MANY CASES, DIFFICULT OR IMPOSSIBLE TO SEPARATE FROM THE MOST BASIC FREEDOMS OF EXPRESSION AND ASSOCIATION THAT LIE AT THE HEART OF THE FIRST AMENDMENT.

I WOULD NOT SPEND A MINUTE OF MY TIME WORRYING ABOUT THE RIGHTS OF MR. WILSON OR MR. TERPIL. BUT EVEN IF EXISTING LAW FELL SHORT OF APPLYING TO EVERY ONE OF THEIR EGREGIOUS ACTIONS -- AND THAT IS A MATTER OF CONSIDERABLE DEBATE -- IT IS QUITE ANOTHER MATTER TO SEEK TO REACH THE FEW AREAS IN WHICH THE LAW ARGUABLY DOES NOT GO BY CRIMINALIZING A VERY BROAD AND VERY VAGUE CATALOGUE OF CONDUCT AND ASSOCIATION WITH A VERY BROAD AND VERY VAGUELY DEFINED HOST OF FOREIGN GROUPS AND INDIVIDUALS.

PART OF THE PROBLEM WAS STATED VERY WELL IN THE JUSTICE DEPARTMENT'S TESTIMONY -- "THE STRUCTURE OF TERRORIST GROUPS DOES NOT ALWAYS FIT EASILY INTO THE CONCEPTUALIZATIONS USED TO DESCRIBE LEGAL ENTITIES." IN CENTRAL AMERICA, NOT ONLY IS IT UNCLEAR WHO ARE "CARD CARRYING MEMBERS," BUT LARGE SEGMENTS OF THE POPULATION WILL COOPERATE FOR A TIME WITH WHOEVER CONTROLS THEIR VILLAGE AT A GIVEN MOMENT. IT WOULD BE EXTREMELY EASY TO SAY THAT COOPERATING VILLAGERS ARE "PARTICIPANTS," TO USE MS. TOENSING'S WORD AND THAT AMERICANS WHO ACT IN CONCERT WITH" THESE "PARTICIPANTS" ARE FELONS UNDER THIS BILL.

I FULLY APPRECIATE THAT THE TARGET OF THE BILL IS CONDUCT RATHER THAN EXPRESSION, AND THE TESTIMONY ON THIS POINT TODAY WOULD BE HELPFUL AS LEGISLATIVE HISTORY, AND WE ARE GLAD TO HAVE IT. THE PROBLEM IS THAT THE LINE BETWEEN CONDUCT AND EXPRESSION WILL RARELY BE A CLEAR ONE, PARTICULARLY WHERE "SERVICES" IS THE KEY WORD AND THE EVIDENCE IS 6,000 MILES AWAY.

IN THAT CONTEXT, MY DEEPEST CONCERN IS THAT THE PROBLEM OF DISCRETION IN THE SECRETARY OF STATE TO NAME PROHIBITED TERRORIST GROUPS WILL BE COMPOUNDED BY A VERY BROAD PROSECUTORIAL DISCRETION, RESULTING IN THE EFFECTIVE POWER TO INVESTIGATE OR SELECTIVELY PROSECUTE THOSE WHO, IN THE JUDGMENT OF THIS OR A LATER ADMINISTRATION, ARE TOO COSY WITH UNFRIENDLY GOVERNMENTS.

I MUCH PREFER TO UPDATE EXISTING CONCEPTS, IF NEED BE, BUT TO CRIMINALIZE ONLY CONDUCT THAT WE ARE ABLE TO PROVE IN A MANNER THAT DOES NOT COME AS CLOSE AS THIS BILL TO THREATENING THE VERY FREEDOMS WE FEAR THE TERRORISTS ARE TRYING TO DESTROY.

IT MAY BE THAT AN ESSENTIALLY TRADITIONAL APPROACH TO COMBATTING TERRORISM -- EVEN WITH AN UPDATED AND MODERNIZED LAW -- WILL ONLY PRODUCE POSITIVE RESULTS IF WE DEVOTE MORE PROSECUTORIAL RESOURCES TO THE PROBLEM. IF THAT'S WHAT IT TAKES, LET'S DO IT AND LET'S BE READY TO PAY THE BILLS.

IT WOULD BE POOR ECONOMY TO FOOT THE BILL FOR COMBATTING INTERNATIONAL TERRORISM WITH THE RIGHTS OF AMERICANS TO TRAVEL, TO SPEAK, AND TO ASSOCIATE. WE HAVE THE STRENGTH AS A NATION TO FIGHT THE MENACE OF THE TERRORIST WITHOUT YIELDING A OUNCE OF OUR NATIONAL SECURITY OR OUR PRECIOUS FREEDOMS. LET'S USE IT.

Senator DENTON. I note in your testimony, Mr. Secretary, that the new note struck today which was a point of concern of Senator Metzenbaum, a point which I acknowledged and one which the media showed considerable interest in, dealt with the sort of unilateral and solo designation by the Secretary of State as to the foreign groups or states that constituted a threat and so on, in terms of terrorism.

You have pointed out that, as is already the case with determinations made under the Fenwick amendment to the Export Administration Act, any decision under the authority of the proposed legislation would be taken in close consultation with other interested agencies of Government, and in the light of clear evidence that the pattern of terrorist activities exists.

I would wonder if you would find it desirable to wait for an amendment from this body, or from our subcommittee or committee, as we mark it up, or would you wish to change the legislation as we go through; would you wish to resubmit to make that clear?

Mr. DEPREE. We would welcome an opportunity, Senator, to work with the committee in drafting language that would serve the purposes of the bill, and yet meet the legitimate concerns which have been voiced about some of the language in the bill. I would think we could work this out together.

Senator DENTON. Just for the record, how serious, in your view, are terrorist incidents abroad? Are they, in your opinion, increasing or decreasing, particularly as they are measured in relation to their effect on American interests?

Mr. DEPREE. The number of incidents reported in 1983 are about the same number as reported in 1982, but in 1983, there were more American casualties as a result of acts of terrorism than in the previous 15 years combined. I believe we had 271 American casualties as a result of acts of terrorism, and the bombing of our marine barracks and the bombing of the Embassy. And so the number of casualties is growing. We feel it is necessary to take measure to prevent further acts against U.S. persons and property.

Senator DENTON. In the case of the terrorist attack, in the case of the attack on our marines, how would this package affect the manner in which that would have been, perhaps, prevented or prosecuted—if at all?

Mr. DEPREE. I personally am not close enough to the details of that. I have with me Terry Arnold. He may choose to comment. I would say the purpose of this legislation is designed, when we have information that American citizens are providing services or support to states, groups or factions that we know are engaged in acts of terrorism directed against the United States, to enable us to take measures to prohibit that service from being provided. In the event organizations are targeting U.S. personnel, as is the case, we feel this legislation would enable us to possibly prevent action rather than to respond after the fact.

Senator DENTON. For example, in the case of Mr. Wilson, my recollection of what he was convicted of is not precise, but generally, I believe, for violations of the Export Administration Act munitions control type of violations. It appears to me that this legislation, if enacted, would have, if his activities were discovered earlier, some of them were legal—for example, recruiting men in the

United States to serve in Libyan groups which I think might have been designatable as terrorists. It would serve to deter or preempt such actions. Is that one of the thrusts of this package?

Mr. DEPREE. Yes, Senator. There are many actions, support services, which now are being provided to terrorist groups, which are not violations of U.S. law. I could mention a few—instruction, for example, in assembly; detonation, placement of bombing devices, for example, is not a violation of U.S. law. This legislation, if enacted, would enable the Secretary of State to designate a group, if we know they are engaged in actions directed against our interests or our personnel, and prohibit this type of instruction from being provided.

Senator DENTON. Well, in case there is any doubt because of my mention yesterday, which was quoted, regarding not wanting to trample on civil rights and so on, I do not want to leave any doubt in anyone's mind regarding my personal view, derived from my awareness, to the degree that it exists, of what is going on with respect to terrorism around the world. I do not want to leave any doubt that I think this package is needed, that further legislation is needed, that this is not just a gesture, nor is it intended to be, in its final form, some sort of trampling on civil rights. I believe, from the attitude that I have heard from the State Department, and from a relativism in comparing this legislation with other legislation which has come down from the administration or been originated within Congress or by interests outside of Congress and introduced by Congressmen, I believe it to be at least average in terms of how many rough spots it has. And I believe that we are going to be able to work this out in a spirit of bipartisanship.

I do not detect any major clashes in objective with respect to Democrats or Republicans on this matter, and I am glad that we are getting off of the conservative/liberal, "You are not a patriot; I am a superpatriot. I have got to protect the interest of the people," and all that sort of thing, and the civil rights.

I believe we are enjoying a decrease in that, and I do not want to put any prejudice on any criticisms that Senator Leahy may wish to enter, but I do feel that, as chairman of this subcommittee, and as a man concerned with what is going on with terrorism, and with that, I will offer Senator Leahy the opportunity to ask questions at this point.

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Thank you, Mr. Chairman.

As I said, I apologize for not being here yesterday. Among other things, I am returning from representing the President at D-day associated activities in Rome. But I did read through the press accounts of the meetings yesterday, and I have talked with some who were here, and I do have a few questions about the bill.

I have no question that terrorism is a matter of concern. I have expressed that both as a member of this committee and as a member of the Intelligence Committee. We have tried a number of efforts to combat terrorism.

I am often concerned when we are eager to pass new laws, laws that even those drafting them have some questions about, laws

that even the Justice Department will state in testimony may well be overbroad, and perhaps should work with us to change.

When I was a young man practicing law, I was taught by the senior partners that when I provided a memo of law or something of that nature, it better be in good form before being submitted. I would like to think that by the time we have gone through the multibillion dollar Justice Department with a piece of legislation and it gets to the Senate, the Department of Justice is satisfied with it, and that the bill is not something that they think they might put together in the hallways and in the corridors and during the hearings.

I am also worried if we say, "Well, let's just pass this thing, however we draft it." We cannot back adding money and other tools to really go after terrorist groups when we see some of the cuts in the Justice Department and those things that really would go after crime.

But let me ask you some specific questions. Other than the Secretary of State's broad discretion to name international terrorist groups and countries and factions, I think the section of the bill which has raised the greatest concern is the section which makes criminal, "acting in consort with" one of these named groups.

The Justice Department points out that this section does not prohibit mere association, and the bill is not intended to infringe upon the exercise of other first amendment rights.

Now, let us assume for the moment that the term, "acting in concert with" is possibly a tad overbroad. What I would like to do is try to understand what activities, short of speech or association, you are going to try to prohibit by this statute.

Let me give you some hypotheticals. And I came from a small town, and I am a small town lawyer, and I do not get a chance to deal in these big, important things that lawyers down here get to deal with all the time, so I have to use hypotheticals, and if you will help me along, I might understand it better.

So please tell me on the following hypotheticals whether the person engaging in the conduct is acting in concert with the named organization, and if the activity should be proscribed through criminal statute.

Let us take the example of American citizens supporting Irish Republican Army activities in Northern Ireland—I hasten to add I am only half Irish, before you think there is anything going on here. Let us assume that the Secretary names not the IRA itself, but some splinter group or faction of the IRA as an international terrorist group—not a far-fetched hypothetical at all.

Take the case of a man who is in touch with the leadership of the named faction and agrees to raise money to purchase weapons in the United States which would be provided to the faction. He then begins a process of raising money.

A two-part question: Is he acting in concert with the faction, and would his conduct be criminal under current law?

Mr. DEPREE. Senator, I, too, am from a small town, probably a smaller town than you are from, and I learned, growing up in a small town, that this seems very much like a legal matter.

I would like to ask our legal personnel here to address that question, if you do not mind.

Senator LEAHY. Thank you.

STATEMENT OF DANIEL McGOVERN

Mr. MCGOVERN. Thank you, Senator.

I will defer to no one from being from a small town, Great Bend, KS. So we have that——.

Senator LEAHY. We probably have enough people in this room to equal the combined populations of all our towns. With that in the record, let us go ahead with the answer.

Mr. MCGOVERN. Your question, as I understood it, was if the Secretary names a splinter group of the IRA, and then the U.S. individual was involved in fundraising for that splinter group—and was there a second part to the hypothetical?

Senator LEAHY. Is he acting in concert with the faction, and would his conduct be criminal?

Mr. MCGOVERN. I think we can distinguish between giving funds, making contributions, to a group of this sort—which I think almost certainly is not intended to be within the ambit of the legislation—the raising of funds, though, I think, may well be intended to be within the ambit of the legislation. I think it could be the sort of support that is intended to be reached. But I would defer ultimately to the Justice Department.

Senator LEAHY. Let me make sure I fully understand. What you are saying is, if he gave money, that does not come under the law, but if he raised money, it might come under the law?

Mr. MCGOVERN. I think there is a commonsense distinction between the active raising of funds, which could be very important support for a terrorist group—in fact, terrorist groups, like all organizations, ultimately depend on the money that is raised to support their activities—so I would not be prepared at this time, though as I said, I would defer to the Justice Department ultimately for the answer to your question. But I would not be prepared to say that all fundraising activities would not be within the scope of this legislation.

Senator LEAHY. But you are saying that the fundraising activity would be more serious than actually just going out and directly giving money to the faction.

Mr. MCGOVERN. That is my reaction, both on—well, I think there is a practical distinction that one would want to make here, that as a practical matter, one could not hope to, and one would not want to prosecute or seek to prosecute every individual who gave money to an organization. That would be an insuperable prosecutorial burden.

Senator LEAHY. Well, now, wait a minute. What you are saying—you have somebody who goes out and passes the hat, and says: "I would like to raise something," and somebody else who says: "By God, I like that faction; here is my check for $100,000. Go to it, boys." Are you saying that the one with the big checkbook is less culpable than the person who is out, passing the hat?

Mr. MCGOVERN. Well, given that particular hypothetical, it may be——

Senator LEAHY. Well, it is the same hypothetical, but go ahead.

Mr. McGOVERN. It may be that the nature of the support given was of such magnitude that it would constitute significant support for the terrorist activity.

But as I say, Senator, the Justice Department is ultimately the best witness on the intended scope of the legislation with regard to this kind of activity, and I would defer to them. I have given you my best judgment as to the intent of the legislation.

Senator LEAHY. So what about the people at the gathering where the hat is being passed? If the Government could establish that they had knowledge that the money they were contributing would be funnelled to the faction to purchase weapons, would they be acting in concert with that foreign faction? You say you might have trouble prosecuting all these people, but wouldn't they be acting in concert with the foreign faction?

Mr. McGOVERN. Within one conceivable sense of the term of "acting in concert." I do not think that that kind of activity is intended to be within the scope.

Senator LEAHY. But it certainly could fall under the law, as presented to us.

Mr. McGOVERN. As I understand the Justice Department testimony that was given yesterday, it was the statement of the witness that that sort of activity was not intended to be within the scope of the legislation.

Senator LEAHY. It is not intended, but the way the law is written, couldn't it be?

Mr. McGOVERN. Well, one must read legislation in the light of the expressed intent of the draftsman, and it is my understanding that it is not the intent of the draftsman to reach the kind of activity that you are speaking about.

Senator LEAHY. So what you are saying is we should rely on the intent of whoever this unknown draftsman is more than we do on the plain language of the law?

Mr. McGOVERN. Well, Senator, I hesitate to suggest that we should engage in the kind of elevator discussion of the drafting of the legislation that you were condemning——

Senator LEAHY. We have gone from the elevator to a witness room where we are preparing a legislative record on this legislation. That is elevating it considerably. Go ahead.

Mr. McGOVERN. But to the extent that the term, "in concert" appears to be vague and susceptible to constructions that would be inconsistent with the consensus of the Congress as to what kinds of activities should be within the scope of this legislation, the administration is prepared to work with the Congress to try to find some other term or phrase that would reach the activity that we all agree should be reached by this legislation. What we are dealing with and what we seek to address ourselves to in this legislation and with the term, "in concert," is a person who acts as if he were a member of a proscribed organization, though he may not have an official membership in that organization; a person who acts as though he were and engages in conduct that is supportive, just as the conduct of an official member of the organization might be supportive.

Senator LEAHY. Well, I used the hypothetical of a man in touch with the leadership of a faction, again using the faction of the IRA.

Suppose that person contacted another U.S. citizen and asked him for help in raising money to send to Northern Ireland, where it would no doubt be used to purchase weapons. The second man goes out and starts to raise money in the United States for that purpose. Under this law, could he be considered as acting in concert with the faction—could his conduct be criminal?

Senator DENTON. After this question, may I ask that we get the time fairly distributed?

Senator LEAHY. Yes. I am sorry.

Senator DENTON. Go ahead, answer the question.

Mr. MCGOVERN. Whether the second man, who has been approached by the person who is in contact with the leadership, and that second man then seeks to raise money in behalf of the organization, whether his conduct might be considered to be illegal—insofar as he is a fundraiser, it is conceivable that his activity would be so supportive of the work of the terrorist organization that it might well be within the scope of the legislation.

Senator DENTON. Thank you, Senator Leahy. I had questions about the specificity of the meaning of "acting in concert with," what does it actually encompass, what does that clause encompass; would it include attending a fundraiser; would it preclude making a speech on their behalf. I believe you have done about as well as you can with the way it is written right now.

On the other hand, I tend to disagree with references to legislation being worked out in the elevator and that sort of thing. Actually, Congress is supposed to come up with legislation. I consider it a favor that the State Department has tried to draft legislation which scarcely makes up for the forfeiture of duty which Congress has been guilty of over 10 years or more, with respect to providing legislation to enact the Montreal Convention's features. That is our job. We have missed out on it, and I consider it testimony to the ineffectiveness of this legislative branch. I am willing to work to smooth this out. I think we are working in a difficult area, terrorism. I think it is new to the United States, even new to the world in its present form; although it could probably go back to Adam and Eve in some ways, the way it is being conducted now is somewhat unique, and I could write a book about that.

We do need legislation. I hope we can work it out in the spirit of cooperation, because without that, we are going to have further delays, if we are just going to bitterly and partisanly chip away at each other, about who is from the smallest home town, and so on.

I would like to get on with the nitty-gritty of trying to find out what we want to end up with.

Do you have any better definition of "acting in concert with," or do you think it is one of the things that are going to have to remain, one of the terms that are going to have to remain vague, and then, case-by-case, worked out? That is the way it is in much legislation. You can appeal on the basis of the constitutionality of that term, or do you think we can improve on it? I am just asking you for your opinion.

Mr. MCGOVERN. Thank you, Senator, and with respect to the comments made by Senator Leahy, with respect, Senator, I simply meant to suggest that we do not consider that we have the last word, or that we are the repository of all wisdom. We have done

our best to draft legislation which we consider responsible, but we want to indicate to you and to the House as well that we are eager to work in a spirit of cooperation to overcome any significant problems that either House of Congress detects, in order to accomplish what we believe is probably a common objective.

With regard to the term, "in concert with," we are not wedded to that term. I am not at all sure that it is the most distinct and definite expression of the idea that we are driving at. And we have been working, I understand, with the staff of this committee and of the House Foreign Affairs Committee, to see if we can more successfully express this concept without laying open any traps for legitimate expression of constitutional rights. So we remain willing to——

Senator DENTON. Well, shall we, then, rather than kick a dead horse, or two dead horses, agree that the term, "act in concert with," and the stipulation of consultation or some form of modification of the unilateral manner, which it is indicated here, the Secretary of State will make these designations—both of those are terms in this package which require improvement.

Mr. MCGOVERN. That is entirely correct, and it is correct as you suggest with regard to the designation by the Secretary. We have been consulting with the staff, and we will continue to work with them to see if there are additional standards that the Congress might wish to suggest with regard to the exercise of the Secretary's discretion in making designations, a notification procedure to the Congress to make sure that we have the benefit of the wisdom of the Congress in making these determinations.

Senator DENTON. In S. 2626, proposed sections 2331 (d) and (e) give the Secretary of State a great deal of unfettered, unreviewable discretion, as we have gone through. Recalling the attack on the U.S.S. *Liberty*, for example, if he had had that absolute authority, would he have declared Israel a terrorist state?

Mr. DEPREE. We do not have the legislation, and I would not wish to try to answer that question, Senator.

Senator DENTON. I believe we have identified the problem of that determination the way it is expressed in the proposed legislation. It will be our job, and we will work with those who agree with us that there is something that needs to be done to change that, and if you have initiatives on that, I believe it will be useful.

With that, I will pass it back to Senator Leahy.

Senator LEAHY. Thank you.

One of the concerns I have when you tried to answer the hypothetical questions I raised–hypothetical questions which are, I think, fairly realistic ones, and things that could well happen—you said several times that ultimate decision had been made by the Justice Department. Yet, you are one of the finest lawyers in Government, and you are in the State Department, where you are giving advice on these things. If you feel it has to be passed over to the Justice Department to make a determination, which, apparently by default, is given credit for what is, in certain areas, pretty sloppy draftsmanship. What is the average person going to do? If the top lawyers of the State Department say it has to be passed over to the top lawyers of the Justice Department to make a determination of whether a particular conduct is against the law or not,

what happens to the average man or woman who might find a particular thing appealing, whether it is to help a group in Africa, help a group in Europe, help a group in Central America? I may well disagree with the people they want to associate themselves with, but how do they make a determination that what they are doing is right or wrong, if the top lawyers in our Government say they may have to pass it from one agency to another?

You see, that is the point of the question, and that is why I think if we need legislation, we are going to have legislation that is going to be drafted far, far better than this, and with far more specificity than anything we see here, or we are going to have not a government of laws, but a government of whim, and the whim will be determined by whoever is in the administration, whether it is a liberal, a conservative, a moderate, or whatever administration. And I think if we are dealing with terrorism, if we are dealing with criminal conduct, it should not be determined by whim. It should be determined by very specific guidelines, approved by the people of this country through their elected representatives, and everybody should know exactly where they stand.

Now, the State Department, I feel, has a stake in stopping the terrorist conduct. I think we rely on our State Department to be concerned with terrorism. Certainly, I am, the chairman is, and everybody else here is. But what is the State Department's intention? How far does the State Department intend to go to stop terrorism, as a policy issue?

Mr. DEPREE. Senator, let me make one observation, and I think Terry Arnold would also like to comment. Probably, it is useful to go back to the starting point of how we arrived at the drafting of this legislation. That is, we are receiving daily a wealth of information with respect to the activities of foreign states, groups, terrorist groups, evidence that indicates that some of the states, some of these groups, factions, are intending to perpetrate acts of terrorism against U.S. personnel, U.S. property——

Senator LEAHY. And I am well aware of the fact that acts of terrorism against Americans in the last 3 years have gone up considerably more than they have any other time since World War II. So I share your concern.

Mr. DEPREE. We also have evidence that some of these states, some of these groups, are receiving services and support from U.S. citizens—services which now, under current law, are not violations of U.S. law. We are searching about for a way to prohibit or proscribe the continued support for these organizations or these states.

So the beginning point is the designation of a state, faction, or group where the evidence is very clear that they are engaged in actions which will be harmful to U.S. national security, our foreign policy, or threaten the lives of American citizens or property. That is the starting point.

Senator LEAHY. Now, let me try to understand. The starting point is a definitional one; is that correct?

Mr. DEPREE. Well, we have this evidence, and there is a whole range of possible support activities that are being provided.

Now, it is very difficult to catalog, to be all inclusive, making sure that we have encompassed everything in the type of support that could be received or is being provided. So the Secretary of

State, in terms of this legislation, is granted the authority to designate these states, factions, or groups support for which we could consider violations of U.S. law.

Now, as to the type of support. We are interested in preventing any support to these groups which we know are engaged in activities contrary to U.S. interests or directed against U.S. personnel—whether it is a donation, whether it is fundraising, whether it is instruction in the arming and detonation of bombs, manning or maintenance of aircraft.

I think it is helpful to consider that that is the starting point. It is very, very difficult when you direct questions about specific activities. It very much depends on the nature of the evidence we have with respect to the organization or the group.

Now, I think, Terry, you wanted to make a comment.

STATEMENT OF TERRELL ARNOLD

Mr. ARNOLD. I take your point, Senator Leahy, on the drafting problem that is involved here, but we were setting out to deal with a very practical problem, that practical problem being that there had been over a period of years, as a result of changes in the pattern of international terrorism, we have been presented with a new version of the trade in goods and services problem. We have, for years, been able to deal with aspects of the export of certain goods to hostile governments and countries through the Export Administration Act. We have been able to deal with the export of weapons to hostile governments and countries through the international traffic-in-arms regulations and related legislation. But what we have been presented with recently is this appreciation that certain types of services which, in their nature, are not illegal or harmful in the general case do provide such significant support to terrorist groups and states as to materially enhance their capacity to do us injury. This has faced us, and I think it has faced the Congress, with a new kind of legislative need.

Senator LEAHY. Well, I share your concern there, and if we were in a closed session, I would pursue that even further, because it is a matter in the Intelligence Committee that we have had a great deal of concern about.

But again, we are dealing with this piece of legislation, and what comes out of it. The bill defines "faction" as:

> Any political party, body of insurgents, or other group which seeks to overthrow the government of, become the government of, or otherwise assert control over or influence any foreign country or territory, possession, department, district, province, or other political subdivision of any such foreign country through the threat or use of force of arms.

Would that definition include the Contras in Nicaragua? Do we want to risk having the Intelligence Committee be indicted for supporting money for the Contras in Nicaragua? I am just curious.

Mr. ARNOLD. Let me talk about a few distinctions here, if I could, for a moment.

An act of terrorism is an act which, in its nature, I think we can understand fairly readily. Without going into legal definitions, I would like to use a practical one for a moment, if I may, Senator Denton.

Terrorism is the use or the threatened use of force for a political purpose to create a state of fear, and that fear will aid in extorting, or coercing, or intimidating, or causing an individual, or a group to alter its behavior.

A terrorist group does not need a defined territory or a specific organization. Its goals need not necessarily relate to any one country. It does not require a popular base of support. Its operations or its organization and its movements are secret. Its activities do not conform to the rules of law or warfare. Its targets are civilians, noncombattants, bystanders, or symbolic persons and places. Its victims generally have no role in either causing or correcting the grievance of the terrorists. Its methods are hostage taking, aircraft piracy, or sabotage, assassination, threats, hoaxes, indiscriminate bombings, or shootings. This set of phenomena is international terrorism when the victim, the actor, or the location of the terrorist incident involves more than one country.

A group that is active in insurgency, in the strict sense of insurgency, even if you look it up in the dictionary, it will say that insurgency is a state of revolt against an established government.

An insurgent group has a defined organization, a leadership, and a location. Its members wear uniforms. Its objectives are acquisition of political power, the achievement of participation in economic or political opportunities, and in national leadership, ultimately taking power in some instances from existing leadership.

Its primary interests relate, therefore, to one country. Its methods are military and paramilitary. Its targets are military, both tactical and strategic, and its operations are governed by the international rules of armed conflict. It operates in the open, and it actively seeks a basis of popular support.

Now, there are indeed circumstances in which a group that fully qualifies by these considerations, that are widely used internationally as an insurgency, may well decide to practice acts of terrorism, but in practicing acts of terrorism, it moves away from its military targets, strategic or tactical, to innocent bystanders, to private citizens, to the list of persons that I mentioned up above, who are the normal targets of terrorist activities.

We as a public, we as a country, have to make these distinctions between the two, and find ways to deal with terrorism as such, as part of that spectrum of activity.

Senator LEAHY. Just so I can understand, though, in the legislation, the question of "faction"—you gave the definition of it—two questions, both of which can be answered "Yes" or "No."

The first question: Would that definition of faction include the Contras in Nicaragua, yes or no?

Would that definition include the leftist guerrillas in El Salvador, yes or no?

Mr. ARNOLD. It would include any group anywhere that is practicing the roster of actions that I indicated in my first, tactical outline of what is terrorism.

Senator LEAHY. I understand. Let me go back to my question. Would that definition include the Contras in Nicaragua?

Mr. ARNOLD. Only if they were doing that kind of thing.

Senator LEAHY. Would that definition include the leftist guerrillas in El Salvador?

Mr. ARNOLD. Only if they were doing that kind of thing. Terrorism is a specific body of actions, reasonably well identified.

Senator LEAHY. Well, so I can understand, because you are one of the ones who have to make the legal determinations, based on your knowledge, from the press or anywhere else, of what the leftist guerrillas have done in El Salvador. Would that definition include them?

Mr. ARNOLD. There have been times when the information available indicates that that group has committed acts that I would call terrorism.

Senator LEAHY. Would that definition, based on what you know, from what you have heard, include the Contras in Nicaragua?

Mr. ARNOLD. I do not have any information that they have committed acts of terrorism by this definition.

Senator LEAHY. The term—and please let me know when my time is up, Mr. Chairman——

Senator DENTON. Well, you generously mentioned about 5 minutes ago that your time was up, but I am interested in your line of questioning, and I thought Mr. Arnold's distinction between insurgency and terrorism was a brilliant one and contributed substantially to my own understanding of that, so if you care to pursue that line, please do so.

Senator LEAHY. Well, I would just as soon wait for my turn, and you go ahead with your questions. I will wait until my next turn around.

Senator DENTON. Yesterday, the Department of Justice was represented here, and we asked a question regarding the signatories to the Montreal Convention and were unable to get a confident statement as to an up-to-date listing. You gentlemen should be in a position to give us that. Can you tell us if the Soviet Union, East Germany, and other Communist bloc states are signatories to this treaty? How about Iran, Syria, South Yemen, and Libya—a complete list in writing would help.

Mr. DEPREE. We will provide that in writing, Senator, yes.

[The following was subsequently received for the record:]

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION (SABOTAGE)

DONE AT MONTREAL, SEPTEMBER 23, 1971—ENTERED INTO FORCE FOR THE UNITED STATES JANUARY 26, 1973

(24 UST 564; TIAS 7550)

Ratification, accession, or notification of succession deposited by:

Argentina
Australia
Austria
Bangladesh
Barbados
Belgium
Bolivia
Botswana
Brazil
Bulgaria
Byelorussian Soviet Socialist Rep.
Cameroon
Canada
Cape Verde
Chad
Chile
China
Colombia
Costa Rica
Cyprus
Czechoslovakia
Denmark
Dominican Rep.
Ecuador
Egypt
El Salvador

Ethiopia
Fiji
Finland
France
Gabon
Gambia, The
German Dem. Rep.
Germany, Fed. Rep.
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Hungary
Iceland
India
Indonesia
Iran
Iraq
Ireland
Israel
Italy
Ivory Coast
Japan
Jordan
Kenya
Korea, Dem. People's Rep.
Korea, Rep.
Kuwait
Lebanon
Lesotho
Liberia
Libya
Luxembourg
Malawi
Mali
Mauritania
Mexico
Mongolia
Morocco
Nauru
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Saint Lucia
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Solomon Is.
South Africa
Spain
Sri Lanka
Sudan
Suriname
Sweden
Switzerland
Syrian Arab Rep.
Thailand
Togo
Tonga
Trinidad & Tobago
Tunisia
Turkey
Uganda
Ukrainian Soviet Socialist Rep.
Union of Soviet Socialist Reps.
United Arab Emirates
United Kingdom
United States
Uruguay
Vietnam, Socialist Rep.
Yugoslavia
Zaire

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION
(SABOTAGE CONVENTION)
Done at Montreal September 23, 1971
Entered into force January 26, 1973

STATE	DATE & PLACE OF SIGNATURE (W - Washington, L - London, M - Moscow)	DATE & PLACE OF RATIFICATION
Argentina	September 23, 1971 - Montreal	November 26, 1973 - W, M, L
Australia	October 12, 1972 - W, L, M	July 12, 1973 - W, L, M
Austria	November 13, 1972 - W, L, M	February 11, 1974 - W, L, M
Barbados	September 23, 1971 - Montreal	August 6, 1976 - L
Belgium	September 23, 1971 - Montreal	August 13, 1976 - W[1]
Botswana	October 12, 1972 - L	December 28, 1978 - W
Brazil	September 23, 1971 - Montreal[1]	July 24, 1972 - W[1], L[1], M[1]
Bulgaria	September 23, 1971 - Montreal[1]	March 28, 1973 - W[1] February 22, 1973 - L[1] March 20, 1974 - M
Burundi	March 6, 1972 - M	
Byelorussian S.S.R.	September 23, 1971 - Montreal[1]	January 31, 1973 - M[1]
Canada	September 23, 1971 - Montreal	June 20, 1972 - W June 19, 1972 - L June 23, 1972 - M
Chad	September 23, 1971 - Montreal	July 12, 1972 - W, L August 17, 1972 - M
China, Rep. of	September 23, 1971 - Montreal	December 27, 1972 - W
Congo (Brazzaville)	September 23, 1971 - Montreal	
Costa Rica	September 23, 1971 - Montreal	September 21, 1973 - W
Cyprus	November 28, 1972 - W November 3, 1972 - L November 2, 1972 - M	August 15, 1973 - W July 27, 1973 - L July 30, 1973 - M
Czechoslovakia	September 23, 1971 - Montreal[1]	August 10, 1973 - W[1], L[1], M[1]
Denmark	October 17, 1972 - W, L, M	January 17, 1973 - W[3], L[3], M
Dominican Republic	May 31, 1972 - W	November 28, 1973 - W
Egypt	November 24, 1972 - L	May 20, 1975 - W[1]

STATE	DATE & PLACE OF SIGNATURE	DATE & PLACE OF RATIFICATION
Ethiopia	September 23, 1971 - Montreal	March 26, 1979 - W[1] April 20, 1979 - M* Apr. 9, 1979 - L*
Fiji	August 21, 1972 - L	March 5, 1973 - W April 18, 1973 - L April 2E, 1973 - M
Gabon	November 24, 1971 - L	June 29, 1976 - W
German Dem. Rep.	March 10, 1972 - M[1]	June 9, 1972 - M[1]
Germany, Fed. Rep. of	September 23, 1971 - Montreal	February 3, 1978 - W[6,7], L[7,6]
Greece	February 9, 1972 - W	January 15, 1974 - W
Guatemala	May 9, 1972 - W	October 19, 1978 - W[1]
Haiti	January 6, 1972 - W	May 9, 1984 - W
Hungary	September 23, 1971 - Montreal[1]	December 27, 1972 - W[1], L[1], M[1]
India	December 11, 1972 - W, L, M	November 12, 1982 - W November 25, 1982 - M[1]
Israel	September 23, 1971 - Montreal	July 6, 1972 - W June 30, 1972 - L July 10, 1972 - M
Italy	September 23, 1971 - Montreal	February 19, 1974 - W, L, M
Jamaica	September 23, 1971 - Montreal	September 16, 1983 - W
Jordan	May 2, 1972 - W April 17, 1972 - L May 4, 1972 - M	April 25, 1973 - W February 13, 1973 - L February 19, 1973 - M
Laos	November 1, 1972 - W January 2, 1973 - L November 27, 1972 - M	
Luxembourg	November 29, 1971 - W November 24, 1971 - L December 7, 1971 - M	May 18, 1982-W,L,M
Mexico	January 25, 1973 - W, M	September 12, 1974 - W, L, M
Mongolia	February 18, 1972 - W[1] January 26, 1972 - L[1] February 2, 1972 - M[1]	September 5, 1972 - W September 14, 1972 - L[1] October 20, 1972 - M[1]
Netherlands	September 23, 1971 - Montreal	August 27, 1973 - W[4], L[4], M[4]
New Zealand	September 26, 1972 - W, L, M	February 12, 1974 - W, L, M
Nicaragua	December 22, 1972 - W	November 6, 1973 - W

STATE	DATE & PLACE OF SIGNATURE	DATE & PLACE OF RATIFICATION
Niger	March 6, 1972 - W	September 1, 1972 - W
Panama	January 18, 1972 - W	April 24, 1972 - W
Paraguay	January 23, 1973 - W	March 5, 1974 - W
Philippines	September 23, 1971 - Montreal	March 26, 1973 - W
Poland	September 23, 1971 - Montreal	January 28, 1975 - W[1], L[1]
Portugal	September 23, 1971 - Montreal	January 15, 1973 - L
Romania	July 10, 1972 - W[1], L, M[1]	August 19, 1975 - W[1] August 15, 1975 - L[1], M
Rwanda	June 26, 1972 - W May 4, 1972 - M	
Senegal	September 23, 1971 - Montreal	February 3, 1978 - L
Singapore	November 21, 1972 - W, L, M	April 12, 1978 - W, M, L
South Africa	September 23, 1971 - Montreal	May 30, 1972 - W[1]
Spain	February 15, 1972 - L	October 30, 1972 - W
Switzerland	September 23, 1971 - Montreal	January 17, 1978 - W, L, M
Trinidad & Tobago	February 9, 1972 - W	February 9, 1972 - W
Turkey	July 5, 1972 - W	December 23, 1975 - W
Ukrainian S.S.R.	September 23, 1971 - Montreal[1]	February 26, 1973 - M[1]
U.S.S.R.	September 23, 1971 - Montreal[1]	February 19, 1973 - W[1], L[1], M[1]
United Kingdom	September 23, 1971 - Montreal	October 25, 1973 - W[5], L, M
United States	September 23, 1971 - Montreal	November 1, 1972 - W November 15, 1972 - L November 22, 1972 - M
Venezuela	September 23, 1971 - Montreal	
Yemen Arab Republic (San'a')	October 23, 1972 - L	
Yugoslavia	September 23, 1971 - Montreal	October 2, 1972 - W, L, M

ACCESSIONS

STATE	DATE & PLACE
Bangladesh	June 28, 1978 - W
Bolivia	July 18, 1979 - W
Cameroon	July 11, 1973 - W[6]
Cape Verde	October 20, 1977 - M
Chile	February 28, 1974 - W
China	September 10, 1980 - W',[6]
Colombia	December 4, 1974 - W
Ecuador	January 12, 1977 - W
El Salvador	September 25, 1979 - W
Finland	July 13, 1973 - W, L, M
France	June 30, 1976 - W[1], M, L[1]
Gambia	November 28, 1978 - W
Ghana	December 12, 1973 - W
Grenada	August 10, 1978 - W
Guinea	May 2, 1984 - W
Guinea-Bissau	August 20, 1976 - M
Guyana	December 21, 1972 - W
Iceland	June 29, 1973 - W, L, M**
Indonesia	August 27, 1976 - W[1]
Iran	July 10, 1973 - W, L, M
Iraq	September 10, 1974 - M
Ireland	October 12, 1976 - L
Ivory Coast	January 9, 1973 - W
Japan	June 12, 1974 - W, L
Kenya	January 11, 1977 - W
Korea	August 2, 1973 - W
Korean Peoples Democratic Republic	August 13, 1980 - M
Kuwait	November 23, 1979 - L; November 27, 1979 - W; December 3, 1979 - M
	December 23, 1977 - W; December 27, 1977 - M

STATE	DATE & PLACE
Lesotho	July 27, 1978 - W
Liberia	February 1, 1982 - W
Libya	February 19, 1974 - W
Malawi	December 21, 1972 - W[1]
Mali	August 24, 1972 - W
Mauritania	November 1, 1978 - W
Morocco	October 24, 1975 - W[1]
Nauru	May 17, 1984 - W
Nepal	January 10, 1979 - W; January 11, 1979; February 22, 1979 - M
Nigeria	July 3, 1973 - W; July 9, 1973 - L; July 20, 1973 - M
Norway	August 1, 1973 - W, L, M
Oman	February 2, 1977 - L[1]
Pakistan	January 16, 1974 - M; January 24, 1974 - W, L
Peru	April 28, 1978 - W[1]; July 12, 1978 - M[1]; August 8, 1978 - L
Qatar	August 27, 1981 - W[1]
Saint Lucia	November 8, 1983 - W
Saudi Arabia	June 14, 1974 - W[1]
Seychelles	December 29, 1978 - L
Sierra Leone	September 20, 1979 - W
Sri Lanka	May 30, 1978 - L; June 2, 1978 - W; June 29, 1978 - M
Sudan	January 18, 1979 - W
Sweden	July 10, 1973 - W, L, M
Syrian Arab Republic	July 10, 1980 - W[1]
Thailand	May 16, 1978 - W, L
Togo	February 9, 1979 - W
Tunisia	November 16, 1981 - L[1]; December 2, 1981 - W[1] December 4, 1981 - M[1]
Tonga	February 21, 1977 - L
Uganda	July 19, 1982 - W
United Arab Emirates	April 14, 1981 - L

STATE	DATE & PLACE
Uruguay	January 12, 1977 - W
Vietnam	September 17, 1979 - M[1]
Zaire	July 6, 1977 - W

SUCCESSIONS

Papua New Guinea	December 15, 1975[1] - W December 4, 1975[1] - L January 7, 1976 - M
Suriname	October 27, 1978 - W
Solomon Islands	May 3, 1982 - W May 6, 1982 - M

FOOTNOTES

1. With reservation(s).
2. Not applicable.
3. Does not apply to Faroe Islands and Greenland.
4. Applicable to Surinam, August 27, 1973; extended to Netherlands Antilles June 11, 1974.
5. Applicable to the territories under the territorial sovereignty of the United Kingdom, as well as the British Solomon Islands Protectorate.
6. With declaration(s).
7. Applicable to Berlin (West).

* Notification listed as accession, but signed.

** Notification from Moscow listed as ratification, but did not sign.

8. With statement.

Senator DENTON. At the moment, you cannot tell us about Iran, Syria, South Yemen, and Libya?

Mr. DEPREE. Those four states have been designated as states which fall within the terms of reference of the Fenwick amendment to the Export Administration Act, and therefore, certain constraints apply to them and the exportation of goods to those countries. There are five countries, Senator.

Senator DENTON. The Montreal Convention was signed in 1971, ratified in 1972. The United States, deplorably, still has no implementing legislation, and I do not intend to let that time become extended. I intend to work as hard and as cooperatively as possible in arriving at legislation that will implement that Convention, but it is my determined intent to successfully come up with legislation, whether it be this version or some other, that implements it.

I would hesitate to say that my staff, as good as they are, would be able to come up with a draft superior to yours. You have more people to work with. I am willing to use it as a point of departure, and I think that there is not a great deal of miraculous manipulation required to turn it into a worthy piece of legislation.

What effects, deleterious effects, have resulted because of our failure to implement the 1971 Montreal Convention on Aircraft Sabotage? Perhaps the later witnesses from the aircraft industry would tell us more specifically, but do you have any comment to make on that?

Mr. DEPREE. Well, we would like to have this legislation so that we can ratify and join in the Convention. We would also find it exceedingly useful in terms of the discussions we are having with allied governments to encourage them to join with us in taking more forceful action against acts of terrorism.

Senator DENTON. Thank you, Mr. Secretary.

Senator Leahy, you are welcome to ask more questions. We do have three panels, and as soon as we can, I would like to get on to the second one.

Senator LEAHY. Thank you. I appreciate the chairman's concern. I do have a number of questions I will probably submit for the record.

I think you understand, Mr. Secretary, that what we are trying to do, if we are going to have legislation like this, we want legislation that the average citizen knows what the ground rules are. And we can joke back and forth who comes from the smallest town and who is the country lawyer, and so on, and that is usually the time when people start grabbing hold of their billfolds when they hear that comment in Washington. But the average person is not a big city or country lawyer, and the average American, I find, is pretty law-abiding. The average American is usually concerned with a lot of different issues and finds himself getting involved in issues whether conservative, liberal, moderate or anything else. But they are law-abiding, and they like to know where they stand. And sometimes, we pass laws that get them into a great deal of problems.

I think one of the most outrageous things that I have seen in 10 years in the U.S. Senate is an item the other day that the Internal Revenue Service was going out and prosecuting people, subjecting them to great fines and everything else, because they wrote notes

on their tax returns, like, "I think you are wasting this money on the wrong thing," or something like that. And that is assuming that every one of us in here, when we pay our taxes, feel that it is totally justified, and that money is going exactly to the right places. And I found in one instance, Mr. Chairman, that they actually went after some woman, as I understand it, with a fine greater than the amount of taxes that she was owing, because she exercised her first amendment rights of saying just what she thought of what was being used with her taxes. They were not fining her for not paying the taxes—she paid the taxes—but because she wrote some note on there, and some faceless bureaucrat, with nothing better to do, and with billions of dollars of the Government's money and everything else behind him, went after her. And there was, technically, a law that you cannot file a frivolous return, or something like that. She filed the right return, but she wrote her thoughts on it. Now, that is the kind of thing we want to make sure we do not get into here, and when we have the term, "national security," it has a long history—in many cases, a wee bit vague. I think people here in Congress, members of the public, understand the kinds of things it entails, but if we base a criminal statute on a finding by the Secretary of State that the foreign relations of the United States want a ban on the receipt of services or other assistance and support of a foreign government, I am not sure anyone can say exactly what that means. We have to assume it does not implicate national security or the inclusion of the phrase would be redundant.

And I wonder, couldn't the bill turn out, in that context, to keep Americans from aiding or even speaking to governments that any President or Secretary of State simply does not like. And that is what we want to avoid.

Mr. DEPREE. I think we share your concern, Senator. We would like to see legislation which is precisely and tightly drafted. At the same time, we want legislation that is going to be effective in reducing the incidence of terrorism and threats on the lives of our people. We have no intention to draft any legislation which would endanger the constitutional rights of American citizens or to reduce the free political expression. This is something inherent in our system and exceedingly healthy.

I think we both have the same objective in mind. I would hope we can work with the committee to find language that will meet your concerns and our concerns and yet get effective legislation soon, so that we can begin to take action against terrorist activities.

Senator LEAHY. Thank you.

I will submit some questions for the record.

[Responses of the Department of Justice to queries submitted by Senator Leahy follow:]

RESPONSES OF THE U.S. DEPARTMENT OF JUSTICE TO WRITTEN QUESTIONS OF SENATOR LEAHY

Questions Concerning the Act for the Prevention and Punishment of the Crime of Hostage-Taking (S. 2624)

Question #1 - Why was the Convention's description of a third party -- the party who is being compelled "to do or abstain from doing any act" not used in the bill?

Answer: In Article I of the Convention the term "third party" is defined as a "State, an international, intergovernmental organization, a natural or juridical person, or a group of persons." While this definition is broad, it was felt that it might not cover some entities such as state or local governments. Hence, we believe that the term should be written and construed as broadly as possible to avoid potential loopholes. As the President stated in the section-by-section analysis of this bill, "the phrase speaks for itself and is intended to have the broadest possible meaning." (See House Document 98-211, 98th Congress, 2d Session, page 8.) While we normally would expect state and local governments in the United States to be able to deal with most hostage-taking situations when a demand is made upon them, it is possible that the hostage-taking episode may actually take place outside their jurisdiction and hence not be amenable to their handling. The bill as written allows the federal government to ensure the protection of the interests of the state. (It should be noted that the term "State" within the Convention refers to countries, and not the political subdivisions within a country.)

Question #2 - Does the Convention mandate federal jurisdiction where the perpetrator, victim, and third party, whom the demand has been made on, are all private parties and United States citizens?

Answer: Article 13 of the Convention states that the "Convention shall not apply where the offense is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State." It would appear under this article that the nationality of the "third party" is immaterial.

Accordingly, Article 13 means that the Convention is not applicable where the hostage-taking occurs within the United States, the hostage is a U.S. national, the perpetrator is a U.S. national, and the perpetrator is found in the United States.

Question #3 - If the Convention does not require that federal jurisdiction be extended to the circumstances described in Question 2, why was it necessary to draft the bill so broadly as to cover these circumstances?

Answer: The Administration chose the broad approach for several constitutional and practical reasons. The constitutional predicate for the assertion of federal jurisdiction over that area not covered by the Convention is the finding by the Congress that hostage-taking, even if purely "American" in nature (i.e., "internal"), affects interstate commerce and domestic tranquility. Unless the broadest jurisdiction constitutionally permitted is assumed, one is confronted with several other

significant constitutional and practical problems. While obviously not all "internal" hostage-takings would warrant federal involvement, there are many that would, especially those perpetrated by terrorist organizations. The hostage-taking of the essential officers of a large national corporation, or of a state official outside his/her own state would certainly be an event as to which a federal response might well be appropriate.

If, however, internal hostage-taking was limited to solely "terrorist" situations by law, it would be necessary to define terrorism. The definition would most likely include some language such as "violent crime committed for political or ideological purposes." This would raise serious First Amendment questions under current case law as it would seem to be punishing a person not just for his violence, but also because it was for a political purpose. By not including any element of "terrorism" in the offense, the statute is neutral on its face and avoids such constitutional issues. Moreover, if we chose to include the alienage of the victim or the perpetrator as an element of the offense, there would be serious questions of "equal protection of the laws" and also basic fairness. (For example, to take an alien hostage would be covered, but not to seize a fellow citizen; an alien who took an American hostage would commit a crime, while another American who took the same American hostage would not.)

There were also very practical concerns. During a hostage-taking event, law enforcement may not readily be able to determine the nationality of the hostage. The nationality of the perpetrator may not even be determinable even after he is captured, if he remains silent and has no criminal record in the United States. Situations may

involve both citizen and alien hostages. Likewise, the perpetrators may include both United States citizens and aliens. Finally, the perpetrator may escape and flee the country. To make the alienage of the victim or the perpetrator an element of the offense adds unwarranted and unnecessary burdens to the prosecution. For all of the above reasons the Admininistration chose to draft the bill broadly, and avoid most of the practical and constitutional problems.

Question #4 - Isn't this bill simply an extension of federal kidnaping jurisdiction at least where ransom demands are made?

Answer: Basically, yes. In the ransom demand situation, the present kidnaping statute (18 U.S.C. 1201) requires for prosecution purposes the interstate or foreign transportation of the victim. For investigative purposes, twenty-four hours must elapse before the FBI can enter the investigation in the absence of some indication of interstate or foreign transportation of the victim. S. 2624 permits, but does not require, immediate involvement of federal authorities where warranted, when a ransom demand is made.

Question #5 - Wouldn't the bill extend federal jurisdiction to crimes within the traditional domain of local law enforcement? For example, wouldn't the bill cover a grocery store holdup where the robber takes the cashier hostage and demands a getaway car?

Answer: The answer to both questions is yes. But present federal law, i.e., 18 U.S.C. 1951, may already be applicable to the grocery store robbery. Under S. 2624, there is an expansion of concurrent federal jurisdiction to what has traditionally been and what ought to remain primarily a local law enforcement responsibility. As the President said in the section-by-section analysis attached to his Message:

> (T)he new provision on hostage-taking is not intended to usurp the authority of state and local law enforcement authorities. It is expected that most kidnapings and hostage-takings will continue to be handled by those authorities and that the federal government will not necessarily intervene in situations that local authorities can handle.

It is our intent to exercise the concurrent jurisdiction only in those cases clearly warranting federal involvement.

We are very sensitive to the need for limitation on federal involvement under a whole host of overlapping statutes (e.g., 18 U.S.C. 659 (Theft from Interstate Shipment), 18 U.S.C. 844 (Arson), 18 U.S.C. 1951 (Hobb's Act), 18 U.S.C. 2312 (Dyer Act), etc.)

The Department of Justice has, in concert with the State and local law enforcement community, established Law Enforcement Coordinating Committees (LECC) in the various federal judicial districts. One of the major areas of concern for the LECCs is concurrent offenses. We are confident that the LECCs will play a key role in establishing federal policy should S. 2624 be enacted.

Question #6 - If this bill would cover any kidnaping where there is a ransom demand made to a third party, doesn't the bill's provision for extraterritorial jurisdiction

create a fairly dramatic extension of federal authority over kidnaping offenses generally, since at the present time extraterritorial jurisdictions can only be exercised where internationally protected persons are involved?

Answer: This is unlikely to have a significant effect in practice. The bill does assert extraterritorial jurisdiction to cover all areas required and permitted by the Convention. The Convention requires us to assert extraterritorial jurisdiction where the perpetrator is a United States national (Article 5, section 1(b)) and where a non-American national who has taken a non-American national hostage outside of the United States is subsequently found in the United States (Article 5, section 2). Under present federal law, there exists no basis to prosecute either kind of perpetrator if he or she is subsequently found in the United States. Moreover, if no extradition treaty existed with the country where the hostage-taking took place, we could not even extradite the perpetrator to that country. In other words, the perpetrator must be left free from prosecution.

In view of the mandatory requirements of the Convention, the Administration believed it was only fair to assert, as permitted by Article 5, section 1(d), extraterritorial jurisdiction over those hostage-taking situations where an American national was the actual victim. We believe, as clearly reflected by the nature of the Convention, that the crime of hostage-taking is approaching in the international community a status similar to that which piracy has had under international law. In this regard, it should be noted that 18 U.S.C. 1653, in

part, covers the acts of piracy against United States citizens. Moreover, the present aircraft hijacking statute (49 U.S.C. 1472(i)) also covers United States registered aircraft anywhere in the world.

Just as we expect state and local law enforcement authorities to handle most internal situations, we anticipate and believe that the foreign government law enforcement authorities will be chiefly responsible for those hostage-taking situations occurring within their jurisdiction. If, however, the perpetrator evades the jurisdiction of the foreign court, or the court fails to mete out justice in vindication of our interests, we would have subject matter jurisdiction over the offense. Of course, we could not proceed to trial unless we obtain personal jurisdiction over the perpetrator and sufficient evidence to sustain a successful prosecution.

Question #7 - Again, if the bill is so broad that it comes close in some instances to the present definition of kidnaping, then why is it necessary to give the Attorney General the authority to ask for assistance from other civilian and military agencies, including the power to override the terms of other federal laws like the Posse Comitatus Act?

Answer: First of all, it is important to realize that this authority for the Attorney General is already in 18 U.S.C. 1201(f) for a violation of subsection 1201(a)(4) involving the kidnaping of a foreign official, an internationally protected person, or an official quest. Similar authority is also contained in other federal statutes, such as

18 U.S.C. 112(f) (assaults on protected foreign officials), 351(g) (assault and kidnaping of Congressmen and other high federal officials), and 1751(i) (assaults on or assassination of the President and his staff). Obviously, there is no desire to use this authority in most of the hostage-taking events that may occur. However, there may be rare situations where the law enforcement resources normally available to the Attorney General, i.e., the FBI and the United States Marshals Service, may not be sufficient. In keeping with the historical precedent and current practice, additional assistance would normally be requested from civilian authorities. Only when other civilian authorities are unable to provide the necessary assistance would the request be made to the military. Requests to the military would follow the procedures already established in this area between the Secretary of Defense and the Attorney General. As the President stated in the section-by-section analysis of his Message to the Congress on this bill:

> This authority is not necessary to implement the Convention, and it would, of course, not be used in most situations. Nevertheless, there may be exceptional circumstances, such as mass hostage-takings in which the Department of Justice would need assistance.

Question #8 - While I appreciate the need to honor international obligations, and this of course includes conventions and treaties, this legislation is another example of a bill that extends federal jurisdiction in an area that has been traditionally the domain of local law enforcement authorities. This approach has been seen in such bills as the Career Criminal Act and has not

fared well with a number of us in the Senate with actual law enforcement experience at the state level.

Can state and local law enforcement officials be assured that the passage of this bill will not be another step in the wrong direction -- namely, excessive reliance on the federal government for a job that should be done by the state?

Answer: As reflected by the answers to the previous questions, the Department of Justice is very sensitive to issues of federalism in the area of law enforcement. Proposed subsection 1201(g) and the entire body of material submitted by the Administration in support of S. 2624 clearly demonstrate the continuing vitality of the state's primary responsibility for handling hostage-taking situations. S. 2624, while being sought because of our international obligations, supplements state law. It does not supplant it. We are confidant that this message will be understood and will be well received by the nation's law enforcement community.

Questions Concerning the Aircraft Sabotage Act (S. 2623)

Question #1 - One of the offenses contained in the bill makes it a crime for a person to willfully communicate information knowing the information to be false, thereby endangering the safety of any such aircraft in flight. Under this section, must the government prove that the safety of the aircraft was actually endangered? Would evidence that the aircraft made an unscheduled, emergency

landing be sufficient to prove that the aircraft was in fact endangered?

Answer: These questions relate to proposed subsection 32(a)(6) of title 18, United States Code. This provision is expressly required by Article 1, section (1)(e) of the Montreal Convention. Under this subsection the government must prove that the safety of the aircraft was actually endangered. In our judgment, an unscheduled emergency landing would be evidence reflecting that the aircraft was in fact endangered. As the President stated in the section-by-section analysis of his Message to the Congress on this bill:

> Currently, the only statutory provision covering false information are 18 U.S.C. 35(a) and (b) with regard to bomb hoaxes and 49 U.S.C. 1472(m) with regard to hijacking hoaxes. However, neither of these provisions has a requirement of endangering the safety of an aircraft while "in flight" as does Article 1, section 1(e) of the Convention. Currently, 18 U.S.C. 35(b) and 49 U.S.C. 1472(m) carry maximum jail terms of only five years and fines of $5,000, but do not require a showing of endangering the safety of the aircraft. Where the additional element of endangering the aircraft is present increased sanctions are appropriate.

Senator DENTON. We have already begun to work with the Justice Department, and will welcome work with you, Senator Leahy, and anyone else who wishes to try to polish this to the point of acceptability and reasonable precision.

We will be submitting questions in writing, too.

I wish to thank, on behalf of the subcommittee and myself, all of you for your excellent testimony this morning, and you are free to go.

Mr. DEPREE. Thank you, Senator, for the opportunity to appear before you and your committee.

Senator DENTON. I will now call our next panel to the witness table. Mr. James E. Landry, vice president and general counsel of the Air Transport Association; Capt. Thomas Ashwood, vice president of the Airline Pilots' Association, and Richard F. Lally, director of security, Air Transport Association.

Before I ask for an opening statement, and with permission from Senator Leahy, I have here a letter from Senators Warner and

Sasser, of the Senate Tourism Caucus, which is relevant to our hearing. They express concern about a potential problem outlined in a recent issue of The Travel Agent magazine.

The problem involves the potential ability for hostile foreign intelligence operatives or terrorists to use sophisticated airline computer reservation systems to track the movements of airlines and their passengers, obviously intended to mean the ability to track the movements of intended victims.

Without objection, I will enter the letter from our distinguished colleagues from Virginia and Tennessee in the record, together with a copy of the article.

[The letter and article referred to above follow:]

U.S. SENATE TOURISM CAUCUS,
June 4, 1984.

Hon. JEREMIAH DENTON, *Chairman,*
Hon. PATRICK J. LEAHY, *Ranking Member,*
Committee on the Judiciary,
Subcommittee on Security and Terrorism,
U.S. Senate, Washington, DC.

DEAR COLLEAGUES: As co-chairmen of the Senate Tourism Caucus, we wish to bring to your attention the potential for international criminal activity in an area which could have devastating consequences to the nation's domestic and international travel industry, and ask that the Subcommittee on Security and Terrorism investigate the matter in the course of your hearings this month on proposals to curb domestic and international terrorism in an effort to determine the extent of the potential, and steps which could be taken to prevent such activity.

Specifically, the potential problem involved is that outlined in a recent issue of The Travel Agent magazine (a copy of the article is attached) and involves the potential for hostile foreign intelligence operatives or terrorists to use sophisticated airline computer reservation systems to track the movements of airlines and their passengers.

The use of aircraft, commercial aircraft included, for spying and for criminal activities is not exactly new. "But the obvious potential of the new airline technology is more sinister than what has gone before," says the article's author, David Gollan. "The vision of a terrorist sitting at a terminal checking the movements of specific passengers and then plotting the movement of the aircraft presents a chilling picture."

It is expected that 1984 will be a year in which the amount of international travel involving U.S. carriers will increase substantially; the World's Fair in New Orleans and the 1984 Olympics in Los Angeles will attract scores of thousands of additional visitors to our country. In such a setting, it behooves those of us concerned to begin to take action to establish safeguards against, and foster an environment designed to inhibit, criminal and terrorist use of airline technology. We must take steps to ensure that this technology is used for its intended purpose: to promote and facilitate travel and tourism between the United States and the rest of the world community.

We would appreciate any efforts by the Subcommittee on Security and Terrorism to initiate an inquiry in this matter, and on behalf of the Senate Tourism Caucus, we stand ready to provide you with whatever assistance and counsel you deem appropriate.

Grateful for your attention and consideration, we remain

Sincerely,

JIM SASSER,
JOHN WARNER,
Cochairmen, Senate Tourism Caucus.

[From the Travel Agent, Apr. 30, 1984]

Do Res Computers Pose Security Threat?

(By David Gollan)

New York.—Foreign intelligence operatives and terrorist groups with access to standard western airline computer terminals have the capability to maintain surveillance of prominent travelers, to plot assassinations and even to coordinate hijackings.

This is the startling conclusion reached by this reporter who stresses, however, that he doesn't yet have any evidence that the computers are being used for such purposes. My investigation was triggered by a seemingly innocuous photograph of the chairman of an IATA member airline presiding at the link-up of his sales office in an East European capital with the carrier's main computer in a Western European country. The photograph appeared in the airline's company newspaper which is circulated to the press.

The airline involved even has a sales office in the foreign ministry of its headquarters city. Thus, unfriendly intelligence operatives and even terrorist groups halfway across the world could have the capability to track diplomats and others planning to fly on the carrier. The airline's sophisticated system also reports on all aircraft movements which might be of considerable interest to such organizations.

And this particular carrier isn't the only one which could be placed in a sensitive situation through misuse of its computers. (Last week, a top official of the airline planned to confer with his computer specialists.)

This reporter also learned that at least one East Bloc carrier with an off-line office in the U.S. is connected to its computer back home, enabling anyone with access to its system in North America to monitor passengers moving across its network which includes many strategic cities in East Europe and the Middle East.

My investigation also pinpointed that in many overseas countries, airline staff are local employees under the control of their government's state security agencies. And in many areas, particularly in the Middle East and Third World nations, local nationals acting as general sales agents have control over the flow of information and of computer terminals.

Airline computers apparently also have the ability to permit governments negotiating big contracts to track the travel movements of executives of foreign companies with whom they are dealing. This way, they can learn from which other countries they may face competition. Also, many of the systems, while private operations, use leased commercial lines which apparently can be accessed for information by those with technical knowledge and government sponsorship.

Even before computer technology existed, airlines were used for espionage purposes, although in a comparatively primitive way. During World War II, Germany operated an air route between Berlin and Stockholm via Copenhagen. German aircraft were routinely used by Danish resistance fighters working on the ramp to smuggle messages from occupied Denmark to Allied agents in Sweden.

And in an incident some years back in Rome, a bound and gagged kidnap victim of a foreign intelligence organization was found—quite by accident—seated in a cargo container complete with airholes just as he was about to be shipped on an IATA member airline to a Middle Eastern capital.

Also, in the 1960s, a defector from a Communist Bloc country told of spy material moving across the Atlantic in magnetic containers fixed secretly under seats on commercial airlines. Those containers were later retrieved by accomplices at Western Europe airports and transshipped to their final destination.

But the obvious potential of the new airline technology is more sinister than what has gone before.

The vision of a terrorist sitting at a terminal checking the movements of specific passengers and then plotting the movement of the aircraft presents a chilling picture.

And while this reporter lacks hard evidence to substantiate his theory that it could be done, it is not too far-fetched to assume, perhaps, that some of the recent airport incidents involving terrorist explosions and attacks were timed to coincide with movements of individuals obtained illicitly from the airlines' computer systems.

Senator Denton. Mr. Landry, if you care to make an opening statement.

STATEMENTS OF A PANEL, INCLUDING JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, RICHARD F. LALLY, DIRECTOR OF SECURITY, AIR TRANSPORT ASSOCIATION; AND CAPT. THOMAS ASHWOOD, VICE PRESIDENT, AIRLINE PILOTS' ASSOCIATION

Mr. LANDRY. Thank you, Mr. Chairman, and Senator Leahy.

I am James E. Landry, senior vice president and general counsel of the Air Transport Association of America, and as you indicated, I am accompanied here today by ATA's director of security, Richard F. Lally, and Captain Ashwood, from the Airline Pilots' Association.

On behalf of the member airlines of the Air Transport Association, we are very pleased to appear before this committee to register our wholehearted endorsement and support for passage of S. 2623, the Aircraft Sabotage Act, which, as you indicated at the beginning of the hearing, Mr. Chairman, is the only bill we are here to address today.

We thank you for seeking the views of the U.S. airline industry on this important topic.

Essentially, S. 2623 would provide for the long-overdue implementation by the U.S. Government of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, better known, perhaps, as the Montreal Convention or the Sabotage Convention. This international treaty was adopted in Montreal, Canada, on September 23, 1971, and ratified by the United States, with the advice and consent of the Senate, on November 1, 1972. It now remains necessary to amend U.S. laws to accomplish its objectives.

S. 2623, the Aircraft Sabotage Act, would constitute the enabling legislation for that purpose.

The Montreal Convention is one of a trilogy of international treaties entered into under the auspices of the International Civil Aviation Organization that provides an essential framework of international safeguards against the crime of air piracy and other unlawful acts against civil aviation.

The first of this trio is the Tokyo Convention or the Convention on Offenses and Certain Other Acts Committed Onboard Aircraft. The United States was the 12th nation to ratify this treaty on September 5, 1969. Implementing legislation was not required, and it came into force on December 4, 1969. The Tokyo Convention provides for continuity of jurisdiction among contracting States over criminal acts occurring onboard aircraft. It also imposes a positive obligation on contracting States to preserve or to restore the control of aircraft subjected to acts of unlawful interference to the pilots in command and to permit aircraft, passengers, crew, and cargo to continue in air transportation.

The second of the international civil aviation security treaties is the Convention for the Suppression of Unlawful Seizure of Aircraft, more commonly known as the Hague or Hijacking Convention. It was signed at The Hague on December 16, 1970, and on September 14, 1971, the United States become the 10th nation to ratify it. Enabling legislation to provide for full implementation of the Hague Convention was signed by the President on August 5,

1974. This treaty obliges contracting states to establish jurisdiction over hijackers, to make the offense punishable by severe penalties, and to submit offenders found in their territories to the competent authorities for prosecution, or to extradite them for prosecution.

The Montreal Convention is the third element essential for completion of this trilogy of international treaties for the security of civil aviation. It deals with sabotage and armed attacks against aircraft and certain aviation facilities and, generally, creates the same obligations on the part of contracting states with respect to these offenses as the Hague Convention creates with respect to the offense of air piracy.

Specifically, as a contracting state, the United States is obliged to establish criminal jurisdiction over the offenses covered, including extraterritorial jurisdiction over offenses involving the aircraft or air navigation facilities of other countries to permit prosecution if offenders are located in the U.S. territory. The "prosecute or extradite" obligation imposed on contracting states by the Montreal Convention with respect to saboteurs is identical to that imposed by the Hague Convention with respect to hijackers.

As to crimes against U.S. aircraft, the special aircraft jurisdiction of the United States as defined in the Hague Convention and in 49 U.S.C. 1301(38) to provide for prosecution of air piracy offenses against U.S. aircraft that occur outside the United States, would be extended by S. 2623 to permit prosecution of the sabotage crimes covered by the Montreal Convention.

Unique to the Montreal Convention and S. 2623, however, is the extension of the jurisdictional base to cover times before and after aircraft are in flight as defined in the special aircraft jurisdiction of the United States. This is accomplished by covering the period aircraft are in service. This term is defined as follows in S. 2623, section 3(a)(4):

> "In Service" means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until 24 hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in-flight.

Since acts of sabotage could likely endanger the safety of aircraft at times prior to and after in-flight activity, this extension of jurisdiction to include in-service periods is desirable and necessary.

Section 4 of S. 2623 contains provisions that are not essential to implementation of the Montreal Convention, but are just as necessary and desirable from a civil aviation security standpoint. Specifically, section 4(a) would permit civil penalty action for false threat and weapon offenses as an alternative to the criminal prosecution presently authorized.

Section 4(d) would supplement the felony hijack hoax offense with authority for civil prosecution. These alternatives will increase the range of punishments available and work to facilitate prosecution of offenders in a manner most appropriate to the facts at hand. This should result in more prosecutions and in increased deterrent to crimes against civil aviation. The airline industry supports enactment of these provisions.

In conclusion, I want to emphasize the importance the airline industry attaches to the primary objective of S. 2623—to provide for the long overdue U.S. implementation of the Montreal Convention.

This Government was a leader in securing its adoption and was one of the treaty's early signers. The convention came into force with the required number of parties more than 10 years ago. Some 120 nations are now parties to the convention.

As the world leader in civil aviation security and in calling for universal adherence to the Tokyo, Hague, and Montreal Conventions, it is an embarrassment that the United States, for more than a decade, has failed to enact domestic legislation necessary for full implementation of this key instrument.

My personal feelings on this score are perhaps stronger than most, because I had the honor of having been a member of the U.S. delegation that worked arduously and successfully through many long sessions in Montreal to secure adoption of the convention. I believed then, and I remain convinced today, that full implementation of the Hague and Montreal Conventions by all nations would effectively eliminate all safe havens for air hijackers and saboteurs and largely end this threat to civil aviation.

Fortunately, the gap in the U.S. laws with respect to implementation of the Montreal Convention has not proved disabling for our Government. But as long as that gap exists, so does the danger that it might be misinterpreted as a lessening of our determination to close every door against criminal acts that threaten the safety of civil aviation. Prompt enactment of S. 2623 will eliminate the danger of any such misinterpretation and send a strong and clear signal of our continuing resolve on this important score.

I was particularly pleased, Mr. Chairman, this morning to hear you express your resolve to see a prompt enactment of S. 2623 and the implementing legislation.

Thank you for your time and attention, Mr. Chairman. We will be pleased to try to respond to any questions or observations, perhaps after Captain Ashwood has spoken.

[The prepared statement of Mr. Landry follows:]

PREPARED STATEMENT OF JAMES E. LANDRY

Mr. Chairman, members of the Committee, I am James E. Landry, Senior Vice President and General Counsel of the Air Transport Association of America. And as you indicated I am accompanied by ATA's Director of Security Richard F. Lally.

On behalf of the member airlines of the Air Transport Association we are very pleased to appear before this Committee to register our wholehearted endorsement and support for passage of S. 2623, the Aircraft Sabotage Act. We thank you, Mr. Chairman, for seeking the views of the U.S. airline industry on this important topic.

Essentially, S. 2623 would provide for the long-overdue implementation by the United States Government of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, better known perhaps as the Montreal Convention or the "Sabotage" (or "Other Acts") Convention. This international treaty was adopted in Montreal, Canada, September 23, 1971 and ratified by the United States Senate w/advice and consent of Senate November 1, 1972. It now remains necessary to amend United States laws to accomplish its objectives. S. 2623, the Aircraft Sabotage Act, would constitute the enabling legislation for that purpose.

The Montreal Convention is one of a trilogy of international treaties entered into under the auspices of the International Civil Aviation Organization that provides an essential framework of international safeguards against the crime of air piracy and other unlawful acts against civil aviation. The first of this trio is the Tokyo Convention or the "Convention on Offenses and Certain Other Acts Committed on Board Aircraft." The United States was the twelfth nation to ratify this treaty on September 5, 1969. Implementing legislation was not required, and it came into force on December 4, 1969. The Tokyo Convention provides for continuity of jurisdiction among contracting states over criminal acts occurring on board aircraft. It also im-

poses a positive obligation on contracting states to preserve or to restore the control of aircraft subjected to acts of unlawful interference to the pilots-in-command and to permit aircraft, passengers, crew and cargo to continue in air transportation.

The second of the international civil aviation security treaties is the "Convention for the Suppression of Unlawful Seizure of Aircraft," more commonly known as the "Hague" or "Hijacking" Convention. It was signed at The Hague on December 16, 1970, and on September 14, 1971 the United States became the tenth nation to ratify it. Enabling legislation to provide for full implementation of The Hague Convention was signed by the President on August 5, 1974. This treaty obliges contracting states to establish jurisdiction over hijackers, to make the offense punishable by severe penalties and to submit offenders found in their territories to the competent authorities for prosecution, or to extradite them for prosecution.

The Montreal Convention is the third element essential for completion of this trilogy of international treaties for the security of civil aviation. It deals with sabotage and armed attacks against aircraft and certain aviation facilities and, generally, creates the same obligations on the part of contracting states with respect to these offenses as the Hague Convention creates with respect to the offense of air piracy.

Specifically, as a contracting state, the United States is obliged to establish criminal jurisdiction over the offenses covered, including extraterritorial jurisdiction over offenses involving the aircraft or air navigation facilities of other countries to permit prosecution if offenders are located in U.S. territory. The "prosecute or extradite" obligation imposed on contracting states by the Montreal Convention with respect to saboteurs is identical to that imposed by the Hague Convention with respect to hijackers.

As to crimes against United States aircraft, the Special Aircraft Jurisdiction of the United States as defined in the Hague Convention and in 49 U.S.C. § 1301(38) to provide for prosecution of air piracy offenses against U.S. aircraft that occur outside the United States, would be extended by S. 2623 to permit prosecution of the sabotage crimes covered by the Montreal Convention.

Unique to the Montreal Convention and S. 2623, however, is the extension of the jurisdictional base to cover times before and after aircraft are "in-flight" as defined in the Special Aircraft Jurisdiction of the United States. This is accomplished by covering the period aircraft are "in-service." This term is defined as follows: in S. 2623, Section 3(a)(4): "* * * 'In Service' means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in-flight."

Since acts of sabotage could likely endanger the safety of aircraft at times prior to and after "in-flight" activity, this extension of jurisiction to include "in-service" periods is desirable and necessary.

Section 4 of S. 2623 contains provisions that are not essential to implementation of the Montreal Convention, but are just as necessary and desirable from a civil aviation security standpoint. Specifically, Section 4(a) would permit civil penalty action for false threat and weapon offenses as an alternative to the criminal prosecution presently authorized. Section 4(d) would supplement the felony hijack hoax offense with authority for civil prosecution. These alternatives will increase the range of punishments available and work to facilitate prosecution of offenders in a manner most appropriate to the facts at hand. This should result in more prosecutions and an increased deterrent to crimes against civil aviation. The airline industry supports enactment of these provisions.

In conclusion I want to emphasize the importance the airline industry attaches to the primary objective of S. 2623—to provide for the long overdue United States implementation of the Montreal Convention. This government was a leader in securing its adoption and was one of the treaty's early signers. The Convention came into force with the required number of parties more than ten years ago. Some 120 nations are now parties to the Convention.

As the world leader in civil aviation security and in calling for universal adherence to the Tokyo, Hague and Montreal Conventions, it is an embarrassment that the United States—for more than a decade—has failed to enact domestic legislation necessary for full implementation of this key instrument.

My personal feelings on this score are perhaps stronger than most, because I had the honor of having been a member of the United States delegation that worked arduously and successfully through many long sessions in Montreal to secure adoption of the Convention. I believed then and I remain convinced today that full implementation of the Hague and Montreal Conventions by all nations would effectively eliminate all "safe havens" for air hijackers and saboteurs and largely end this threat to civil aviation.

Fortunately, the gap in United States laws with respect to implementation of the Montreal Convention has not proved disabling for our government. But as long as that gap exists, so does the danger that it might be misinterpreted as a lessening of our determination to close every door against criminal acts that threaten the safety of civil aviation. Prompt enactment of S. 2623 will eliminate the danger of any such misinterpretation and send a strong and clear signal of our continuing resolve on this importance score.

Thank you for your time and attention, Mr. Chairman. We will be pleased to try to respond to any questions or observations.

Senator DENTON. All right. Captain Ashwood, do you have a statement?

STATEMENT OF THOMAS ASHWOOD

Captain ASHWOOD. Yes, Mr. Chairman, thank you.

I am, as you stated, Capt. Tom Ashwood, first vice president of the Airline Pilots' Association, and I represent the professional interests of 30,000 pilots on 44 U.S. airlines.

I am also chairman of the International Flight Security Committees for both the Airline Pilots' Association and also for the International Federation of Airline Pilots' Associations, which represent pilots from 64 nations throughout the world, including some of the Iron Curtain countries. I have been involved in the subject matter of terrorism for some 15 years, particularly as it relates to civil aviation.

We are very grateful for this opportunity to present our views on this particular, important matter, and we are also grateful to you, Mr. Chairman, and also to Senators Biden and Thurmond for their introduction of legislation, S. 2623 through S. 2626.

We are primarily interested in S. 2623, because of its aviation aspects. We believe that you cannot take the aviation subject and just separate it out of the whole fabric. It is only a piece of the whole, because in terrorism, you have acts of terrorism directed against other targets which tend to spill over into other areas. We have had Embassy attacks which have resulted in aircraft hijacking as an escape mechanism, so they are very much interrelated.

Both as professional pilots and citizens, we are very relieved that Congress is confronting what is generally accepted by professionals in the field of anti- and counterterrorism as among the most serious problems confronting the United States and indeed, the whole world.

This proposed legislation is, we believe, an important early stage, and we stress that, sir, of what must be a complete package of protective legislation to counter this particular threat.

The history of the past 15 years clearly indicates that civil aviation presents a clearly visible and attractive target for terrorists of every type, from the lone madman to Government-sponsored paramilitary groups. Both national and international legislation has been drafted to address and, hopefully, counter this problem.

The Montreal Convention, in concert with sections of the Hague and Tokyo Conventions, were drafted to this end. Unfortunately, they contain no enforcement procedures. They are laws that have no prescribed punishments for those who break them.

In 1978, the United States joined with several other nations in what has become known as the Bonn Agreement. That Agreement says signatories will take "immediate action" to halt commercial

air service to and from any country that harbors aircraft hijackers. Since that grand declaration was made, however, little or no attention has been paid to the principles that it embodied. The legislation being proposed in S. 2623 goes beyond rhetoric and grand purpose and perhaps, for the first time, makes some very practical moves to counter this dreadful threat, and we hope for its speedy adoption.

If I may focus for a moment on the threat to civil aviation, I would like to direct your attention to a couple of specific matters which are perhaps more general than specific.

It is not often that my organization finds itself in the role of an admirer of the Federal Aviation Administration. But in the case of the aviation security, we are comfortable in that particular role. One of my companions on this panel today, Mr. Lally, was formerly head of the FAA security, and he deserves much of the credit for his pioneer work in that field. The division he helped to found continues to do outstanding work, far beyond the limits that their manpower and financial resources would suggest. We suggest that this committee, while we recognize that it is not within your responsibility or authority, sir, that you encourage the appropriate authorizing body to expand and enhance this very highly efficient and cost-effective division, known as the Civil Aviation Security Division of the FAA. I am somewhat surprised—indeed, I am astonished—to find that they are not scheduled to appear as witnesses before this committee, and I respectfully suggest that you take whatever steps are necessary to have them give their views on this proposed legislation.

Another matter which would bear some thought and investigation is the establishment of a special division within our Government structure with the overall responsibility for anti- and counterterrorism. This is done in several other nations, as I am sure you are aware, sir.

Currently, the Department of Transportation, Department of Justice, Department of State, military, CIA, and so forth, all operate within the narrowest lines of required coordination, communication, and cooperation. We believe that the United States should, as many other nations have done, establish a small, but highly specialized, department of Government which would have the responsibility for the organization and coordination of all our efforts in this particular field. I believe this would go a long way to addressing some of the fears about the individual powers of certain Cabinet members if we had such a department and had oversight coming from Congress.

Let us act to establish such an entity before the need for one becomes tragically and painfully evident. You could probably fit the entire world supply of real experts in the field of anti- and counterterrorism in this room, so I am not speaking of the creation of a new bureaucratic monster.

The expertise our organization has painfully gained over the past 15 years is available to you, should you decide to pursue the suggestions.

The subject matter of the proposed legislation offers so much high drama in terms of public and media attention, we hope that

the serious intent and the responsible law which it embodies are not lost on that same public and the same media.

The facts are plain and simple. The potential for terrorism replacing diplomacy and civilized, accepted differences between nations is with us and is becoming more of a reality every day. This country must, in the brief time remaining to do something, prepare itself so we may identify it, quantify it, neutralize it, counter it, and finally, make the price of using it so high that other nations will cease sponsoring it.

S. 2623 and its companion bills start us on the road to that goal.

Thank you, sir, and I am ready to answer any questions you may have.

Senator DENTON. Thank you, Captain Ashwood and Mr. Landry, and I acknowledge Mr. Lally's accomplishments in the field. I have not heard any skepticism or objection to the bill you are here to support. Therefore, the calling of other witnesses may have been time-redundant.

But for the record, would you collectively offer some opinions about the ramifications in the event that this legislation does not pass?

Captain ASHWOOD. Is that a question for me, sir?

Senator DENTON. We will have to go to the floor with it, and although there seems to be no hostility toward it yet, one never knows.

Captain ASHWOOD. I think the credibility of the United States in terms of both international civil aviation and in many other areas of foreign policy would be severely damaged if such legislation were not enacted, having once been started.

Mr. LANDRY. If I could add, Mr. Chairman, this particular treaty is largely of U.S. design. The United States really took the lead in this, and we ratified it 12 years ago, and I think it sends a very bad message to the rest of the world and to terrorists around the world, if we do not see fit, and cannot get our act together, to get this implementing legislation through.

Mr. LALLY. I might add, Mr. Chairman, that the administration and the Department of Justice have previously, on more than one occasion, submitted proposed legislation to achieve this objective. And for whatever reason, because it was attached to controversial bills or because there was not the highest priority behind it, it failed enactment.

I think now is the opportunity to correct that failure and to send a clear and convincing signal of U.S. resolve on that score.

Senator DENTON. Well, thank you, and as I assured you earlier, it is my determination to act as promptly as possible, particularly on this part of the package.

You heard me reference the letter which was included in the record, quoting a recent issue of Travel Agent magazine, regarding the potential ability for hostile foreign intelligence operatives or terrorists to use sophisticated airline computer reservation systems to track the movements of airlines and their passengers.

Are you familiar with that article, Mr. Landry, and will you comment on it?

Mr. LANDRY. Yes, I am, Mr. Chairman, and I would like to say a few words about it, and then perhaps pass it on to Mr. Lally, who is our security expert.

I would say that as soon as we saw the article, we had the Airline Industry Security Committee begin an inquiry into the allegations and whether these actions that the author indicated were possible were indeed feasible. Our initial inquiry does not indicate that a criminal could perpetrate the kind of action that the author discusses in that article. It obviously was a matter of considerable concern. But we, thus far, have not been able to establish that it is at all possible.

But I would like Mr. Lally, perhaps, to add a few thoughts.

STATEMENT OF RICHARD F. LALLY

Mr. LALLY. I would only add, Mr. Chairman, that in reading the article, you will find that the author himself admits it is pure speculation, that there is no basis for the concept he espouses. And I think that the sensational nature of that kind of story doesn't do the publication that published it all that much good.

The inquiry that we have initiated indicates that the ability to achieve what the author speculates is possible is, in fact, not possible. Now, to expand on that in technical terms with respect to computer capability and airline reservation systems is sort of beyond me at this point. But we are assured of that fact at this time, and we have airline security representatives preparing a technical response to have on the record to refute that possibility.

Senator DENTON. Thank you. Without any expertise whatever on that subject, judging only from the computerized success of transferring my luggage, or keeping track of my own airline tickets, I would think that, perhaps the best way to break the Communist/terrorist economy would be for them to pursue such an objective, and pour lots of money into it. I really think it would be a futile thing.

But we would be interested in receiving your technical refutation of the article and will invite the attention of Senators Warner and Sasser to that.

I want to thank you, gentlemen, and as I say, I do not see any immediate threats to the passage of this bill on the horizon, but we have the House to go through, also, and I promise you my determination to continue to try to push it along.

Mr. LANDRY. Thank you, Mr. Chairman.

Senator DENTON. The next panel consists of Mr. Jerry Berman of the American Civil Liberties Union and Joseph Hassett, Esq., of Hogan & Hartson.

Welcome, gentlemen. I understand Mr. Berman does not have a statement.

Mr. BERMAN. I would just have a few words, and then I will turn it over to Mr. Hassett.

Senator DENTON. All right, surely. Go ahead, Mr. Berman.

STATEMENTS OF JERRY BERMAN, AMERICAN CIVIL LIBERTIES UNION, AND JOSEPH M. HASSETT, ATTORNEY, HOGAN & HARTSON, WASHINGTON, DC

Mr. BERMAN. First of all, Mr. Chairman, on behalf of the American Civil Liberties Union, we would like to thank you for the opportunity to testify today on S. 2626, a bill to prohibit the training, supporting, or inducing of terrorism and for other purposes, and other recently introduced administration bills respecting international terrorism.

Our testimony today will focus principally on S. 2626, because of the dangers that bill poses to civil liberties. Because of the considerable constitutional implications of this legislation, we asked Mr. Joseph Hassett of Hogan & Hartson to prepare a legal memorandum for the American Civil Liberties Union on the constitutional issues involved. His analysis is so clear and convincing that this bill is facially unconstitutional and a major threat to civil liberties as introduced, that I have asked Mr. Hassett to join us today and present our testimony on behalf of the ACLU. He is a noted attorney and expert in first amendment law in Washington, DC.

Senator DENTON. All right. Mr. Hassett is welcome to read his statement. I would ask that it be restricted, as were the others, to within 10 minutes, and we will include the entire written statement in the record without objection.

Mr. Hassett.

STATEMENT OF JOSEPH M. HASSETT

Mr. HASSETT. Thank you, Mr. Chairman, and in view of your kindness in inserting the entire written statement, I will not repeat any of that.

The point of that statement is to try to demonstrate to the committee that the language of S. 2626 is overbroad. And I think that the record now before the subcommittee establishes that more eloquently and more clearly than I could. We have had witnesses here from the State Department admit that the language of the bill as drafted would cover legitimate fundraising activities for legitimate purposes.

We have had it pointed out that in the terms of the statute itself, the giving of a speech for an entirely legitimate purpose would be covered. And highly trained lawyers from the State Department have admitted here that it is impossible to tell, from reading the language of the statute itself, what it covers and what it does not. So I do not think there is any need for me to take up the time of the subcommittee in demonstrating what is already very clear.

It has been suggested that possibly, then, all we have here is a drafting problem, that a quick fix of some kind, a word here or a word there, could solve the problem. But if you listen closely, Mr. Chairman, you then hear the representative of the State Department say that it is the position of the State Department that once a faction, or a country, or a group is designated by the Secretary, any support to that group should be a crime.

And I think, Mr. Chairman, there is a fundamental question raised by that point. Should it be the case that, once the Secretary has said that this group of terrorists is a bad one, as opposed to

another group of terrorists which is not, that any support, even innocent, legitimate, protected support, is a crime.

And on the other hand, shouldn't it be, as we have learned from decades of experience with similar questions, shouldn't it be that before an expression of support is a crime, there should be some requirement that the prosecution prove a specific intent to aid and abet the carrying out of an unlawful aim, the unlawful aim of engaging in acts of terrorism.

Now, I think, Mr. Chairman, that this is a fundamental point that cannot be cured simply by tinkering with the "in concert with" language. In fact, were you to strike that language from the bill entirely, you would still have language that says "or provides any support." And that language would cover the fundraising just as easily as the "in concert with."

In short, Mr. Chairman, there is a fundamental question here as to what it is that the bill, in fact, is trying to accomplish.

I have no quarrel at all with what we sometimes hear is the stated purpose of the bill. The purpose of the bill is to prevent Americans—the Wilsons and Terpels of the country—from teaching foreign terrorists how to build bombs or make boobytraps for the purpose of assisting those foreign terrorists in carrying out acts of terrorism. There is no objection whatever to that kind of a bill. But this bill does not do that. This bill says that any kind of support, even the most innocent and protected political support, for any group that has been designated as the bad group, is a crime. And that fundamental philosophy is spelled out in the testimony submitted yesterday by the Department of Justice. It is at page 10, and I think it is so shocking that we should read it and look at it.

In that testimony on page 10, the Justice Department representative said that—admitted that some training that would be outlawed by this bill, some training, could be for apparently nonterrorist purposes. By that, we could have training—and training includes teaching—and so any teaching could be for apparently nonterrorist purposes, but would be included. And here is the reason they give, and I think it is very important. I think it is sufficiently important that we look at the exact language: "The rationale is that any learned skill is but a tool that can be used for evil, as well as good, depending upon the intent of the user."

I think it is startling, Mr. Chairman, when you come to the end of that sentence, and you find that it is the intent of the user which sends the teacher to jail. Under this bill, if the teacher teaches reading, the teacher is a criminal if the student uses the knowledge gained to write the ransom note.

Senator DENTON. Excuse me—to do what? If the student uses the knowledge to do what?

Mr. HASSETT. To write a ransom note, to write the speech for the leader of the faction. In other words, Mr. Chairman, what this bill is doing—and its philosophy is set out here at page 10—is punishing the teacher for the conduct of the student. It is punishing the provider of some innocent service for what the other person does.

Now, as a practical matter, at a trial of the provider of that service, the conduct of the user may very well be probative evidence of the intent of the provider. So that if, at trial, it was shown that Wilson had taught people how to make pipe bombs, and it was

then proved that those people used pipe bombs, the jury could—and, I am quite confident, would—find that the purpose of the provider of the instruction was to aid and abet the commission of the terrorist act. But this bill does not direct the requirement of proof to the intent of the provider of the service, but it directs it to the user, and then it punishes the provider for the intent of the user.

I think that that provision is not only a threat to civil liberties, but it is a threat to the moral basis of our law. It completely divorces punishment from guilty intent. I think that it is a fundamentally un-American notion, but it is the notion that is at the heart of this bill, and it is a notion that will not go away by tinkering with the "in concert with" language. Of course, there is a simple way out of it, and it is the way that has been taught through decades of litigation, in the Supreme Court, over similar issues, and it is the point that is made in the *Noto* case and in many cases, *Elfbrandt,* and other cases that we cite in our prepared statement: that for a statute to punish mere association with a group, without requiring proof of intent that the person intends to aid and abet the carrying out of unlawful activity, is to sweep too broadly and is to create a statute that is unconstitutional. And it is no answer, Mr. Chairman, to say: "Oh, that could be straightened out on a case-by-case basis," that the defendant, after being convicted, could always appeal. By saying that, we are saying to American citizens that the Congress is going to pass a law which, by its own terms, outlaws protected, political activity, and the burden is then upon the citizen either to not engage in the protected conduct, thereby forfeiting his first amendment rights, or to go ahead and exercise his rights, to be indicted, to be convicted, to suffer disgrace, to spend tens of thousands, hundreds of thousands of dollars, years of litigation, in order that ultimately, he might be vindicated. I do not think that that is the way this subcommittee is going to act. The obligation is on this subcommittee to come up with legislation that, when you look at it and you read its terms, you can tell what it covers and what it does not.

Now, I think that there has been discussion in two separate compartments. In one compartment, we have had discussion here of the overbreadth problem, and in the other compartment, we have talked about the problem of the standardless delegation to the Secretary of State to designate what terrorist groups can be supported and what cannot. I think, in fact, those two problems are very much related, and they are all part of the same ball of wax. And when they are perceived as such, much becomes clear.

Now, I think the first point that we have to remember is that the power of designation given by this bill to the Secretary of State is not simply a power to designate a group as being terrorist. By assumption in this bill, all the nations, or factions, or groups that we are talking about share that first qualification that they are terrorists within the definition incorporated in the statute.

What the Secretary is determining is not that the group is a terrorist group or faction, but that it is a group or a faction that the Secretary believes should be barred from receiving support by Americans—and support is very broadly defined.

Now, I think that there was general agreement yesterday that the delegation of this power was virtually without standard, that

the Secretary had complete discretion in the matter as to what group he would include and what not, or what country, or what faction. And it was suggested that perhaps the solution is another band-aid or quick fix, and that is to have the State Department go back and draft a better standard, or draft a requirement of consultation with this body.

I must say, I am at pains to know what standards I would use were I to sit down and try to define those terrorists that were worthy of support by American citizens. What terrorists should we say that it is fine for Wilson and Terpel to teach them how to make their bombs?

These distinctions, these standards, whatever they may be, would be very difficult to understand from the point of view of the victim of the terrorist attack.

Isn't it clear, Mr. Chairman, that the only reason for this power to designate the good guys from the bad guys is because of the very overbreadth of the statute to begin with.

Senator DENTON. Because of the what?

Mr. HASSETT. Because the statute is so overbroad. And in fact, the representative of the Secretary of State conceded here in his testimony that the overbreadth of the statute would not really be troubling to the committee if you started out with a recognition that these overbroad provisions would only be applied with respect to support for countries that the Secretary of State, in his sole discretion, decided were the bad countries. Well, I think that that is the clearest indication there could be of how this broad discretion given to the Secretary is intimately swept up with the overbreadth of the statute, and that, by contrast, if the statute were once drafted so as to make it a crime to support a terrorist group only when the activity was given to that group for the purpose of aiding and abetting the commission of terrorist acts, then the need for the designation would completely evaporate, because we would then all see clearly how wrong it would be for the United States to enact a statute that implied that there were groups of terrorists in the world that we thought our citizens ought to be helping by instructing them in how to carry out their terrorist acts.

Mr. Chairman, I appreciate this opportunity to appear here, and of course, we would be glad to answer any questions.

[The prepared statement of Mr. Hassett follows:]

Prepared Statement of Joseph M. Hassett

Mr. Chairman and Members of the Committee:

Introduction

On behalf of the American Civil Liberties Union, I thank the Committee for this opportunity to testify on S.2626, a bill "To prohibit the training, supporting, or inducing of terrorism, and for other purposes" and other recently introduced administration bills respecting international terrorism.*/ As you know, the American Civil Liberties Union is a nonpartisan organization of over 275,000 members dedicated to the defense and enhancement of civil liberties guaranteed by the Bill of Rights. Our testimony focuses primarily on S.2626 because of the danger that bill poses to civil liberty.

Terrorism is a threat to the ordered liberty we cherish. Therefore, we would not oppose carefully drafted legislation designed to punish such aiding and abetting of terrorist acts as may not be covered under present law, such as the knowing provision of services or training in the United States with the specific intent of aiding the commission of sabotage, bombings, or other terrorist acts outside the United States. Unfortunately, however, the instant bill is not so designed. Instead, this bill would give the Secretary of State the sole discretion to outlaw support for certain countries, factions, or groups; and then make it a crime for Americans to support that country or

---

*/ I wish to acknowledge the assistance of Catherine James LaCroix, Steven P. Hollman and Emily Preyer in the preparation of this testimony.

group, even though their support may be directed to legitimate political aims or aspirations of the country or group, involve support activities clearly protected by the First Amendment, and not be intended to aid or abet terrorist acts of force or violence.

S.2626 is clearly unconstitutional. It violates the fundamental principle of our constitutional law that a "blanket prohibition of association with a group having both legal and illegal aims", without requiring a showing of specific intent to further the unlawful aims of the group, is, as the Supreme Court said in Elfbrandt v. Russell, 384 U.S. 11 (1966), an unconstitutional infringement of "the cherished freedom of association protected by the First Amendment . . . ." This principle has been applied by the Court time and time again. See, e.g., NAACP v. Claiborne Hardware Co., 102 S. Ct. 3409, 3429 (1982); United States v. Robel, 389 U.S. 258 (1967); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Scales v. United States, 367 U.S. 203, 229 (1961); Noto v. United States, 364 U.S. 290 (1961).

It is not difficult to illustrate the unacceptable consequences of the administration's failure to follow the principle set forth in the Elfbrandt case in drafting S.2626. Under the present bill, for example:

--A clergyman might visit the leader of an insurgent faction in a foreign country as to which the incumbent administration had prohibited support. Should the clergyman be impressed with the grievances of the insurgents and agree to return to the United States to urge support for their cause, his doing so would violate

the terms of the legislation. He would be acting in concert with a prohibited faction (§ 2331(a)(1)).*/

--An American lawyer who represented an alleged member of a designated group in a trial would be subject to the charge that he was acting in concert with or providing a "support service" to a prohibited group ((a)(1) and (2)).

--An American who, on a paid or volunteer basis, wrote a propaganda tract for a designated faction would also run afoul of this bill (id.).

--Citizens sending money to aid the lawful political activities of a designated group could be charged with the crime of providing "support services" under this bill (id.).

We believe that the administration intends that S.2626 cover such situations, and that its purpose is to cover any assistance to a designated group, leaving to the courts the task of sorting out those particular cases in which application of the broad terms of the statute would violate the First Amendment by punishing protected activity.

The bill thus ignores the substantive axiom of First Amendment law that, as the Supreme Court said in NAACP v. Button, 371 U.S. 415, 438 (1963) and repeated in United States v. Robel, 389 U.S. 258, 265 (1967), "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." It is not enough to say to American citizens that their most precious freedoms of political expression and association will be

---

*/ Subsequent parenthetical references are to paragraphs of § 2331.

ultimately vindicated after indictment, disgrace, possible imprisonment, years of litigation and crushing expense. Instead, it is the responsibility of this body -- one it has often nobly shouldered -- to stand guard against legislation whose overbroad language chills First Amendment activity by indiscriminately establishing, as the Supreme Court said in Robel, "guilt by association alone, without any need to establish that an individual's association poses the threat feared by the Government in proscribing it." 389 U.S. at 258.

If the threat feared here is the provision of technical assistance for the purpose of aiding terrorist acts, it is no great task to draft legislation that so provides, yet does not sweep within its ambit protected activity engaged in for wholly legitimate purposes, such as the activities of the clergyman, lawyer, author and contributor described above. This bill shuns that approach in favor of an overly broad definition of the offense.

The Definition of the Offense

The first step in defining the offense is the Secretary of State's determination that a group's "acts or likely acts of international terrorism" warrant a ban on support by United States citizens. ((d).) This determination may apply to three different kinds of groups: (1) the armed forces or any intelligence agency of a foreign government or the agents of that government's armed forces or intelligence agency ((a)(1)); (2) a faction, which includes "any political party, body of insurgents, or other group which seeks to become the government of a foreign country through the threat or use of force of arms" ((j)(3)); or (3) an international terrorist group,

a group which engages in acts of violence for political purposes outside the United States or in a way that transcends national boundaries ((j)(6)).*/

The second step is the prohibition against the following forms of support to the prohibited group:

1. Any action "in concert with" the prohibited faction, group, or government agency ((a)(1));

2. The provision of "training in any capacity" to the faction, group, or government agency ((a)(2));

3. The provision of any "logistical, mechanical, maintenance, or similar support services" to the faction, group, or government agency ((a)(3)); and

4. The solicitation of any person to engage in any of the above-described activities ((a)(4)).

This critical language -- the language that must serve to distinguish legitimate political activity from crime -- is a coat of many colors. On the one hand, it contains words like "armed forces" and "logistical", soothing assurances that sound as though we are legislating against the aiding and abetting of terrorist activities. On the other hand, however, the prohibition against the providing of "any training" is so broad as to indict the most praiseworthy form of instruction. By divorcing the crime from any requirement that the criminal intend to aid or abet terrorist activity, the statute would criminalize instruction, for example, in the principles of non-violence. Moreover, the definition of acting "in concert with" covers any joint

---

*/ Although it is not clear on the face of § 2331(a) and (b) that the prohibition runs against the entire faction and group, rather than only the armed forces or intelligence agency (or their agents) of such faction or group, a representative of the Department of Justice has advised us that the construction stated in the text is the one intended.

action to bring about a common end, however laudable the shared goal.

In sum, the drafter's injection of an occasional military term does not change the fact that this bill punishes association with the legal aims of a group, without any requirement of a showing of intent to further other, unlawful activities of the group. Harvard Professor Abram Chayes' defense of Nicaragua in the World Court, for example, could be construed as an "act in concert with . . . the armed forces" of that country. If Nicaragua had been designated, he could be convicted of violating this statute without any showing of an intention to further the commission of terrorist acts. In sum, this legislation poses precisely the danger emphasized by the Supreme Court in Noto v. United States: "There is a danger that one in sympathy with the legitimate aims of . . . an organization, but not specifically intending to accomplish them by resort to violence, might be punished for his adherence to lawful and constitutionally protected purposes, because of other and unprotected purposes which he does not necessarily share." 367 U.S. 290, 299-300 (1961).

There are three very important reasons why the overbreadth of this statute is particularly dangerous:

1. As shown above, the statute sweeps so broadly that its terms prohibit the exercise of fundamental freedoms of political speech, association and expressive conduct.*/

---

*/ See, e.g., Buckley v. Valeo, 424 U.S. 1 (1976) (contributing money); Broadrick v. Oklahoma, 413 U.S. 600 (1973) (political campaign activity); Brotherhood of Railroad Trainmen v. Virginia State Bar, 377 U.S. 1

(Continued)

2. Because of the FBI's authority to investigate criminal activity, the tremendous breadth of this statute's definition of a crime would authorize wholesale FBI investigation of political activity on a scale not hitherto envisioned. The scope of investigation that would necessarily follow enactment of this bill would extend far beyond that which the FBI currently exercises with respect to suspected domestic or international terrorist activities, activities that pose a more immediate threat of violence and injury to persons in the United States than the foreign acts of terrorism addressed by this bill. Under the FBI's current Guidelines, a domestic security/terrorism investigation may be initiated only when there is a reasonable indication that persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States. */ FBI counter-terrorism guidelines are similarly focused on Americans suspected of acting on behalf of a foreign power and engaged in acts of force or violence designed to achieve political purposes. In sharp contrast to the present requirement of direct danger of criminal force or violence, this bill would open the way to wide-ranging investigation of political activities that are entirely peaceful and lawful.

(Continued)

(1964) (railroad workers had first amendment right to advise injured workers to obtain legal services and to recommend specific attorneys); NAACP v. Button, 371 U.S. 415 (1963) (first amendment protects "association for litigation" where the litigation is intended to reach political ends); Thornhill v. Alabama, 310 U.S. 88 (1940) (picketing).

*/ Section III.B.1.a., Attorney General's Guidelines for Domestic Security Investigations, Hearings Before Subcomm. on Security and Terrorism of the Senate Comm. on the Judiciary, 98th Cong., 1st Sess., 76 (1977).

3. The instant bill is so overbroad as to be subject to the doctrine that it is "invalid on its face". Under the law of the First Amendment, a penal statute is unconstitutional if it does not aim specifically at evils within the allowable area of state control, but instead sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech. Such a statute by its very existence causes a continuous and pervasive chilling of all freedom of discussion that might reasonably be regarded as within its purview. Such overbreadth may enable an actual terrorist to evade conviction, because the argument that a statute is unconstitutionally overbroad may be raised as a defense by someone who engaged in activity that the government could lawfully have prohibited through a more narrowly-drawn statute. Thornhill v. Alabama, 310 U.S. 88 (1940).

Accordingly, passage of the instant bill would both be dangerous to our protected liberties and ultimately self-defeating -- if the goal is to deal with the problem of terrorism in a responsible way -- because it invites judicial invalidation.

A Word About the Secretary of State's Conclusive Determinations

The provision of the bill giving the Secretary of State broad discretion to make a conclusive determination as to which countries or factions should be subject to the bill is, in effect, the grant of the power of censorship. Under this bill, the Secretary has discretion to prohibit domestic political activity in support of one country or faction, but permit support for another, although both are engaged in terrorism. The only standard is his

subjective determination that "national security" or "foreign relations" "warrant" the ban in one case but not in the other. Such discretionary power to suppress speech is plainly unconstitutional. Cox v. Louisiana, 379 U.S. 536, 557-558 (1965); see United States v. Robel, 389 U.S. 258, 281 (1967) (Brennan, J., concurring in result).

Moreover, the conclusiveness of the Secretary's power conflicts with the fundamental principle of due process that, in a criminal prosecution, the government is required to establish every element of the crime beyond a reasonable doubt, In Re Winship, 397 U.S. 358 (1970), and presents difficult questions as to whether the legislation is a Bill of Attainder, see United States v. Brown, 361 U.S. 437 (1965).

The designation provision is also likely to make the statute ineffective because individuals could easily circumvent the Secretary's designation by forming a new group.

All of these difficulties would evaporate if the offense were precisely defined in terms of aiding and abetting the commission of terrorist acts, an offense that can be straightforwardly applied across the board to all terrorists, without any need of designation, a concept that is constitutionally flawed and suggests that there may be terrorism in the world which our country is prepared to favor or tolerate.

The Three Other Bills

With limited exceptions, the other three administration bills (S.2623, S.2624 and S.2625) appear to be responsible efforts to address real problems. The principal

reservation we have relates to Section 3(7) of S.2623 which would permit the use of the United States military services and intelligence agencies to conduct investigations in the United States with respect to acts of hostage-taking that occurred in foreign countries and involved wholly foreign participants and victims. No good reason has been advanced why the long-standing tradition of separating the military and intelligence services from domestic police functions ought to be breached for this purpose. Accordingly, given the clear undesirability of returning to the massive army surveillance program uncovered in the 1970's and terminated after its revelation at congressional hearings, we oppose this aspect of S.2623.

Conclusion

It is clear that S.2626 threatens activity protected by the First Amendment, both because its language sweeps too broadly and because its virtually standardless delegation of discretion to the Secretary of State carries with it a power to stifle dissent from the reigning foreign policy of the moment. Moreover, the bill contains a number of flaws which threaten its effectiveness as a deterrent to international terrorism. First, its overbreadth and its effort to make the Secretary's determination conclusive in a criminal trial raise a substantial likelihood that any criminal conviction would be reversed on constitutional grounds. Second, new terrorist groups would not be designated, and thus not covered, and old ones could escape coverage by changing their names.

Accordingly, we believe that the administration should return to the drawing board with a view toward drafting a more responsible bill.

Senator DENTON. I find much to agree with in the specific objections which you brought up. I think we might all be guilty occasionally of dramatizing the degree of difficulty, to say we have to go back to the drawing board, or that this legislation is categorically impossible to develop into a useful piece of legislation which would satisfy civil libertarians as well as those—we all should be civil libertarians—and also satisfy security requirements which it is aimed to meet.

I am struck by the wording to which you referred yesterday in the testimony of the lady from the Justice Department in which, on the one hand, she says: "It must be emphasized that the target of this bill is conduct," underlined, "—conduct which directly facilitates terrorist activity," and then on the other hand, in another section, she says, "Second, all forms of training for such groups are covered. For example, how to assemble boobytraps would be covered." And then, this sentence, which gives me concern: "While some training could be for apparently nonterrorist purposes, any learned skill is but a tool that can be used for evil as well as good, depending upon the intent of the user."

I agree with you that the teaching of the skill of reading, for example, by an innocent teacher in that nation could hardly be prosecutable, and indeed, represents holding the teacher accountable for that which the student does, when the teacher has but imparted an innocent, on the face of it, skill.

So I do think that needs fixing. We have the business already of having the solitary power invested only in the Secretary of State to designate certain nations. I could shudder at the designations made by certain people that I could envisage being Secretary of State. And if he really had that absolute power, I would be concerned. However, if he showed that he was a nut, he would be fired. There would be appeal. In my opinion—and you gentlemen are much more aware of this than I—but since *Marbury* v. *Madison,* courts have the right of review any time a constitutional question is raised. Notwithstanding the fact that S. 2626 would not permit a defendant in a criminal proceeding to question the Secretary of State's determination as to a terrorist entity, is it not true that an aggrieved party or a potentially aggrieved party could raise the issue in a civil proceeding?

Mr. HASSETT. I do not think so, Mr. Chairman, if the word "conclusive" means what I think it means. The statute in that respect has two sentences. The first of those sentences—it is the second of those sentences that refers to what would be the case of the criminal prosecution. I do not have it in front of me, but it is the second sentence that says the defendant in a criminal case may not ask the jury to review the finding of fact by the Secretary that this group warrants a ban, whereas another group does not.

The first sentence of the provision says, "The determination by the Secretary will be conclusive." Now, I think that——

Senator DENTON. Well, it has already been made manifestly clear—and I do not mean to interrupt—that he is going to be required to be delimited in some manner, consultation with Congress or that sort of thing. So as I say, your overall exposition was brilliant, but let us not kick that dead horse too much. We are going to do something about that.

Mr. HASSETT. I thought the question was, Would his determination be reviewable in a civil case——

Senator DENTON. That was that question, but then you got into the business of the absoluteness of the determination by the Secretary, and so on.

Mr. HASSETT. If we were to assume that the bill were written to say that these determinations would be reviewable in civil cases and not criminal, I think that we would have a rather peculiar, split-level system of law in the country, where I could be convicted of aiding group A in my criminal trial, but it was determined simultaneously, in a civil case, that group A was a fine and proper group and worthy of support. I think that the fundamental problem insofar as the criminal prosecution is concerned is that it has always been my understanding that one of the reasons this country was founded, and one of the reasons that we resist terrorism, one of the freedoms we try to protect, is the right of the accused in a criminal case to call upon the prosecution to prove every element of the offense that is going to put that defendant in jail. And I heard the representative of the Justice Department say yesterday that these questions were too important for juries to be bothering themselves with.

But I just disagree with that fundamentally.

Senator DENTON. Well, I think you are well qualified, positioned, and really, mandated, to question the civil liberties and the constitutional rights involved in this bill.

Mr. Berman, did you have a comment?

Mr. BERMAN. Well, I was going to point out that the only challenge that we would have—and I think it was alluded to by the Justice Department the other day—a citizen would have the right to challenge the constitutionality of the conclusiveness of the determination by the Secretary of State that A country or B group was a terrorist organization.

I think that the citizen would be successful, that the court would find that making that determination conclusive, particularly in view of the broad definition, what Mr. Hassett would call "overbreadth," the broad coverage of what support activities might be made illegal under this statute, that the court would find the statute constitutionally defective and strike it down. So that until that point, you would be burdening citizens with guessing, and also, the burden of litigating a constitutional question. Even though I think the chances are that the challenge would be highly successful, it would be rendering the work of the Congress ineffective if the goal is to deal with the problem of terrorism, because you will have passed a statute which is unconstitutional. And if a real terrorist is prosecuted under it, who had committed some violent act, that terrorist would go free by being able to attack the facially unconstitutional vagueness of the statute. So it does not serve anybody's purpose, either the national security or civil liberties, to introduce and to proceed with legislation that is broadly drafted.

Senator DENTON. Well, I regret if we have not impressed you with our intent to avoid such a pitfall, but it is our intent to do so. And we do recognize that this S. 2626 requires substantive change. I do not know that we have to start from scratch again; we might

differ in that. But certainly, the specifics which you raise are valid ones, at least in most cases.

I must admit that I am not a lawyer, but I was not bad at logic. I did not even have to take the course, because I solved the problem the guy gave on the first day of the class that was never solved before. So I am not entirely uncomfortable here, but I must say again, I am not a lawyer.

If this thing were to go forward, what kind of civil actions, other than the constitutional challenge, would you envision bringing in order to contest the determination made by the Secretary of State, and what legal theories would you pursue?

Mr. BERMAN. Assuming that the legislation is enacted in its present form?

Mr. HASSETT. Well, I think if it were enacted in its present form, I would have a very serious question whether anybody would have the opportunity to challenge the designation other than the criminal defendant, after he had already put himself at risk. That is the problem with the legislation.

Mr. BERMAN. In other words, we would not be able to go into court and have standing independent of a client who comes to us and is being prosecuted under this statute and says: "Would you help us? We think we are being prosecuted under an unconstitutional statute."

Senator DENTON. Couldn't a client seek a declaratory judgment?

Mr. BERMAN. The courts are loathe to grant declaratory judgments. They are more willing in the first amendment area, but there is no guarantee under current law. I think, because they like to avoid advisory opinions, they might let it go through a prosecution and a trial and then you would have your right to appeal. If Mr. Hassett disagrees, he might state a different opinion. But our real intention, I think, is to join the committee in terms of its own statements, and, I think, the sense of the Congress, and agree that this statute should not go forward in this way, and indicate that we would vigorously oppose this statute going forward this way. I do not think the Congress in its wisdom would pass this statute in this present form. So I think we are just engaging in a form of hypothetical which is not going to occur.

I think what we meant by urging the administration to go back to the drawing board is that, in having some discussion with officials about what conduct they are trying to reach, I do not think they are clear in their own minds where they want to draw the line.

We heard the State Department witness trying to make distinctions, not simply in terms of the statute, but what are the policy ramifications, and until they sort this out, and say, "This is the kind of support we want to reach," and then from our point of view, until the statute says that the kind of support is conduct, and conduct which goes to terrorist acts, and it is knowing or intentional conduct on the part of Americans, until the statute approaches putting the crime in those terms, I think it is going to be constitutionally defective.

We would not oppose a narrow bill prohibiting terrorist acts or the knowing or intentional engaging in terrorist acts on behalf of a foreign country overseas if it is not covered under present law. But

this statute is not designed that way; it is not so narrowly focused, it is not focused on a Wilson or Terpil situation. It is far broader than that, and I think that the obligation of the Justice Department and the State Department is to take the Wilson and Terpil example, or it is the obligation of the Congress to say: "Let's draft a statute that reaches that conduct and leaves protected speech outside of it."

Senator DENTON. Well, I asked you the question not inimically. I wanted to get you on the record with your full statement. We have already agreed with you that acting in concert with and certain other, or the unilateral nature of the determination by the Secretary of State, are matters of severe concern. I just wanted to get you drawn out on it.

If we removed acting in concert with, we would be making considerable progress, I suppose, with respect to the chilling effect that you feel toward the measure, but there are other matters, too.

Mr. Hassett.

Mr. HASSETT. Yes; I would just say that the "in concert with" would remove part of the mechanism that carries out the inimical philosophy of the bill, but the general philosophy would still remain, and it would be carried out by other particular terms, including, for example, the "provide any support service for" language, which pretty much does the same thing as the in concert with. So that, while it is true that the in concert with language is a definite problem, there is a more fundamental problem which is reflected in the sentence that you read, Mr. Chairman, from the Justice Department testimony, and that is the failure to require an intent by the accused to aid and abet a terrorist act.

I do not think anybody has an objection to legislation that would prevent American citizens from using the technical knowledge that they have to aid and abet the carrying out of terrorist acts by foreigners. So, I think everybody would favor that kind of legislation, and the question is how do we word it. And the key wording, I think, is the requirement of specific intent.

Senator DENTON. Well, her language, in all fairness, was not part of the legislation, but was her interpretation thereof, and I would agree that in the history or the report of the legislation, we would have to change her stated—you know, everyone makes mistakes sometimes. She might regret having said that.

Mr. HASSETT. No, no. There is no mistake whatever, I do not think, Mr. Chairman——

Senator DENTON. Well, if not, then I would be in favor with you of taking that part out, where any learned skill can be * * *, et cetera. I would not, as chairman of this subcommittee, support that kind of language in the interpretive part of the bill.

Mr. HASSETT. The change, I think, Mr. Chairman, that needs to be made is in the legislation.

Senator DENTON. I would say, gentlemen, I would think it a flawed philosophy, were we to adopt legislation specifically on the history of chasing some past case alone, such as *Wilson* and *Terpil.* There are other examples which we are aware of now, both in the Select Committee on Intelligence and from just common sense, that we must address to try to stop the kind of thing that is involved in the *Wilson/Terpil* category of case. And I do not think you would

disagree with that, and I have not heard you say anything this morning that grates on me, except that we haven't gotten anywhere.

I think they have made a constructive approach, and we have got to correct it.

Mr. BERMAN. I think we are in agreement that changes have to be made in this bill, and that I think the committee is stating that it would like to draw a demarcation between constitutionally protected activity and the direct assisting of a terrorist organization or a terrorist act, knowing that you are doing so. And that is a very differently crafted piece of legislation.

Senator DENTON. Well, you use the term, "direct assisting." I do not know that we could——

Mr. BERMAN. Knowing that the service is going to be used in the conduct of a terrorist act, or intending that it be so, is conduct which can be criminalized. The question is, if, again, you take one step back from there and say that the service will be given, but the provider does not know or does not intend that it be used for a terrorist act, then we are right back to this legislation.

Senator DENTON. Yes, but if a guy sells 1,000 50-millimeter machineguns to a group that you and the Secretary of State and everyone else in the United States were to agree was terrorist and was injurious to U.S. interests, then we have to get into the man saying: "Well, I did not know, I did not intend." We got into that before on a previous bill, as you remember, which you held up for about a year and a half with respect to the difference between reason to believe and proving intent. I hope we do not get into that again, because it is with, I think, a consonance of spirit that we are trying to address both the liberties aspect and the security aspect of this bill. And I assure you, I will be listening and then ready to read anything you have to offer, not only today, but in the future, as means of improving this.

Mr. BERMAN. Thank you very much, Senator.

Senator DENTON. Thank you for your testimony, and I thank all for their interest today.

This hearing stands adjourned.

[Whereupon, at 12:12 p.m., the subcommittee was adjourned.]

LEGISLATIVE INITIATIVES TO CURB DOMESTIC AND INTERNATIONAL TERRORISM

WEDNESDAY, JUNE 13, 1984

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:25 a.m., in room SD-226, Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Staff present: Joel Lisker, chief counsel and staff director; Gerald Everett, congressional fellow; John Podesta, minority chief counsel; and Fran Wermuth, chief clerk.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Good morning. This hearing will come to order. My tardiness is due to inability to clone myself. I am at another hearing, also, and I am going to have to get back up there at 11:30, so I hope this one will be completed thoroughly by that time.

I want to welcome everyone, especially our first witness, Mr. Martin G. Malsch, Deputy General Counsel for the Nuclear Regulatory Commission. I am sorry your boss is ill this morning.

Mr. MALSCH. He sends his apologies.

Senator DENTON. That is quite all right. I will make some remarks and then turn to you, sir.

The subcommittee this morning is considering and hearing testimony on S. 2470, the Anti-Nuclear Terrorism Act of 1984. The bill, as drafted, is intended to grant nuclear power reactor licensees access to the national criminal history files of the FBI.

A vital element in protecting against insider threats at nuclear power reactor facilities is the background investigation conducted on individuals requiring unescorted access to protected and vital areas of those facilities.

I have a bad throat and I am sorry for the voice, or lack thereof.

The background investigations provide an indication of an individual's reliability, stability, and trustworthiness. Of course, an individual's criminal history record is a crucial component of a background investigation, and may be the determining factor in deciding whether to grant or deny an individual access to a facility.

Unfortunately, at the present time most of the background checks by nuclear power reactor licensees are limited to State or local files which may or may not include an individual's past criminal record in other areas of the country.

Unbelievable as it may sound, there are more stringent background checks being conducted today on bankers, stockbrokers, and securities traders than there are on people who have unescorted access to nuclear facilities.

It is my belief that nuclear plant employees should be subject to at least the same degree of scrutiny, if not more, as those previous professionals I mentioned when it comes to knowing about any criminal record that they may have. It makes simple, common sense.

With that in mind, we will begin our discussion of S. 2470. Before we proceed with our first witness, I want to enter for the record, without objection, two letters in support of S. 2470 received from public utilities. The first is from the Cleveland Electric Illuminating Co. in Cleveland, OH; the other is from the Wisconsin Electric Power Co. of Milwaukee, WI.

[The letters referred to above follow:]

THE CLEVELAND ELECTRIC ILLUMINATING CO.,
Cleveland, OH, June 5, 1984.

Senator JEREMIAH A. DENTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR DENTON: Your bill, S. 2470, requiring persons allowed unescorted access to nuclear facilities to be fingerprinted, and the results made available to nuclear power plant licensees is an excellent bill. I have written Senators Glenn and Metzenbaum urging them to support it.

Sincerely,

THOMAS J. BADER,
Senior Security Advisor.

WISCONSIN ELETRIC POWER CO.,
Milwaukee, WI, June 5, 1984.

Hon. JEREMIAH A. DENTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR DENTON: This letter is in reference to S. 2470, to provide for national security by allowing access to certain federal criminal history records.

The Wisconsin Electric Power Company, which owns and operates the two unit Point Beach Nuclear Plant, as well as all of the nuclear power industry, is presently required to screen personnel who will be assigned to work in a nuclear power plant, to detect any past personal behavior that could adversely impact on the safe operation of the plant and the public health and safety. However, criminal arrest and conviction records are normally not available to non-law enforcement agencies. This lack of background information decreases our ability to conduct the extensive background investigation that is necessary for assuring the selection of emotionally and morally reliable personnel and, therefore, places the overall screening program at some jeopardy.

We believe that S. 2470 will provide an essential element of the screening program and Wisconsin Electric Power Company strongly supports the passage of this bill.

Very truly yours,

THOMAS J. CASSIDY,
Senior Vice President.

Senator DENTON. We now turn to our first witness, and he is speaking as deputy for the NRC General Counsel, Herzel Plaine, who is ill.

Welcome, Mr. Malsch, and you may proceed with your opening statement.

STATEMENT OF MARTIN G. MALSCH, DEPUTY GENERAL COUNSEL, NUCLEAR REGULATORY COMMISSION, ACCOMPANIED BY DONALD B. MAUSSHARDT, DEPUTY DIRECTOR, OFFICE OF NUCLEAR MATERIALS AND SAFEGUARDS

Mr. MALSCH. Thank you very much. Mr. Chairman, I am pleased to have the opportunity to testify on S. 2470, the proposed Anti-Nuclear Terrorism Act of 1984. The Commission recommends enactment of S. 2470, subject to certain modifications to limit the type of of criminal history record information subject to access and to clarify the NRC's authority regulate licensee use and redissemination of such criminal history information.

Enactment of S. 2470, as modified, is recommended as a means of facilitating nuclear reactor licensee efforts to obtain criminal history records and of promoting uniformity in industry-conducted personnel screening programs.

I begin by noting that nuclear power reactor licensees have long been involved in efforts to assure the security of their facilities. One of the ways licensees attempt to counter the insider threat is through employee screening programs which include background investigations to establish personal trustworthiness and reliability.

An important element of the background investigation is the criminal history check. The Commission has endorsed these industry-run clearance programs for personnel at nuclear power plants and has relied for this purpose on licensee adherence to the employee screening guidance contained in American National Standard Institute "Industrial Security for Nuclear Power Plants"—so-called ANSI-N18.17. I understand that has since been superseded by a more updated standard which the NRC has also endorsed in reviewing individual licensee security plans.

Currently, the Commission has under consideration a proposed insider safeguards rule which requires nuclear reactor licensees to establish personnel screening programs for employees requiring unescorted access to vital and protected areas of a reactor, and which provides criteria to guide licensees in making the decision as to access authorization.

With respect to prior criminal history, the proposed rule would provide that conviction of any felony or series of lesser offenses indicating habitual criminal tendencies will be considered in determining an individual's eligibility for access authorization.

One Commission goal in developing the insider safeguards rule is to achieve greater uniformity in the operation of personnel screening programs throughout the nuclear industry. There was general agreement among the participants in the rulemaking proceeding that there is a need to have greater uniformity in industry-conducted screening programs.

Local and State laws regulating dissemination of criminal history information have resulted in a wide variance in the type and quality of criminal history information available to licensees. Enactment of S. 2470 would promote greater uniformity in industry-conducted personnel screening programs by assuring that all licensees would base their access determinations on the same kind of criminal history record information. As will be explained, there is wide

diversity in the kind of criminal history record information that is available to licensees operating in different States.

At present, the only significant Federal requirements for State or local criminal history use or maintenance, including use and maintenance of information obtained from the FBI, are in the Crime Control Act of 1973 and in regulations issued originally by the Law Enforcement Assistance Administration, and now administered under the Justice Systems Improvement Act.

The practical effect of these regulations is to vest in State and local governments the authority to establish their own criminal history record information dissemination policies. States and localities can set their own standards and have done so. As a result, the availability of criminal record history information is entirely dependent on State and local law and may vary even between the political subdivisions of a particular State.

Widespread diversity is evident even if we limit our analysis to legislation at the State level. Although the rule in the majority of States continues to be that private employers can and do obtain conviction data, the fact is that the information obtained by one licensee may be radically different from the information available to another located in a different state.

All 50 State jurisdictions now have some type of open record or freedom of information act. A review of several of these acts indicates a lack of uniformity in the authority for withholding some types of criminal justice information.

The clearest example pertains to nonconviction data which is only available in nine States. There are also limitations on the availability of conviction data that have significant effects on the type of information available. One example involves restrictions to access if an individual has no further involvement with the criminal justice system for some specified period of time. The time period for an access restriction to become operative may vary from State to State.

As a general rule, the time periods range between 3 to 5 years for misdemeanors and felonies not involving violence, and between 6 to 10 years for serious felonies. Variations also exist with respect to the types of crimes subject to access restrictions.

Finally, some States permit access to all conviction data in circumstances of especially sensitive employment responsibilities and there is a lack of uniformity with respect to the occupations deemed to warrant such access.

The above lack of uniformity in the conviction data available to licensees can be substantially remedied by allowing nuclear reactor operators direct access to the National Crime Information Center data relevant to the rule requirements. However, specific legislation is needed.

This FBI service is provided only to government or private entities specifically authorized by statute. The FBI originally disseminated criminal history record information indiscriminately to public or private entities. However, in *Mernard* v. *Mitchel* a U.S. district court interpreted the statute which authorizes the FBI to collect criminal records as containing an implicit prohibition of dissemination to private entities and to State and local noncriminal justice agencies. The FBI, accordingly, amended its regulations to

prohibit criminal history record information to the general public or to private sector employers, except in limited circumstances not relevant here.

The *Mernard* decision was, however, partially superseded. Congress, in Public Law 92-544, authorized the FBI to disseminate criminal history record information to officials of federally chartered or insured banking institutions and to officials of State and local governments for purposes of employment and licensing decisions, if authorized by State statute and approved by the Attorney General.

Following Public Law 92-544, Congress also authorized dissemination to private entities engaged in certain securities transactions, such as brokerage houses. In these instances, however, the FBI is forbidden by regulation from releasing records of arrests without information on the disposition of such arrests where no active prosecution is pending after one year and the individual is not a fugitive. If information on disposition is not available at the time of a request, the history will not indicate that the individual was arrested.

As presently drafted, S. 2470 would provide licensees access to such arrest data, thus overriding Department of Justice policy and regulations which limit its dissemination for employment and licensing purposes to Federal agencies as opposed to private entities.

We believe that Department of Justice policy is sound and do not support licensee access to arrest information without dispositional data. In our view, such data often suffers deficiencies in its accuracy, probative value, and reliability. Further, it is not necessary.

The criteria for access determination in the proposed section 73.56(B) do not authorize denial of access based on the mere fact of an arrest. On the contrary, it merely permits the licensee to consider the fact of a "conviction of a felony or series of lesser offenses indicating habitual criminal tendencies."

Finally, we believe the bill should also be modified to recognize explicit Commission authority to regulate licensee use and redissemination of criminal history record information obtained by licensees.

I have submitted with my testimony draft bill language that would effect the suggested modifications and I would like to have that attachment included in the record, if that is possible.[1]

Senator DENTON. Without objection, it shall be included.

Mr. MALSCH. Thank you very much.

Senator DENTON. Thank you, Mr. Malsch. We appreciate the efforts of the NRC in trying to establish uniform standards and criteria for unescorted access. I note from your prepared testimony that in developing those standards, the criteria for access do not authorize denial of access to a nuclear facility based on the fact of an arrest or series of arrests if those arrests do not result in a conviction.

Do you not feel that records of arrests might be useful, whether or not the person arrested is convicted, or if the prosecutor chose to not prosecute the case or stet the case? Would they not be useful if

[1] See "Draft Bill" following the prepared statement of Mr. Plaine on p. 174.

they were looked at in overall context, and would it not be risky not to?

Mr. MALSCH. Well, I think there is a judgment call involved here. I would hesitate to say that this kind of information would be of no use whatsoever, but we are talking about a limited class of data; that is to say records of arrests over a year old without information on disposition.

As to this particular class of data, there are some competing considerations. On the one hand, you have the desire on the part of the Commission and the industry and the public to provide increased protection against radiological sabotage at reactors. And on the other hand, you have the individual's interest in being treated fairly by his employer.

I think the Commission's view is that taking into account these two interests and, as we stated in the statement, questions about the reliability and accuracy and probative value of that kind of information, we just do not think it is necessary and would be of limited value. But obviously this is a judgment call which the Commission has made.

Senator DENTON. Well, I would not want to superimpose my own personal judgment. I do not believe it would be authoritative, and certainly it would not be justified for me to do so. So I would have recourse to those who are authorities, and in doing so I have developed the understanding that the Justice Department had no objection to the language of S. 2470 as currently drafted.

You have praised the Justice Department for its view of this situation, and yet you have that disagreement. You want to revise the language to exclude nonconviction data, and it appears to me that that was an initiative coming from the NRC rather than the Justice Department. Is that true?

Mr. MALSCH. That is correct. That was our initiative and that is the Commission's judgment, and I think it is only the Commission's judgment. I think you would have to ask the Justice Department—I would not presume to speak for them—as to whether this is a good idea or a bad idea.

Senator DENTON. Well, again, without any personal conviction regarding what we should do here, I do hold a letter from the Department of Justice Office of Legislative Affairs, dated August 31, 1983, in which, in writing to the then Chairman of the Nuclear Regulatory Commission, they strongly support the wording of this bill as written. So we will have to take that into consideration as we proceed here.

Mr. MALSCH. I would note, Senator, that there may be some area of confusion here. The kinds of limitations that we mentioned in our testimony are adopted from Department of Justice guidelines which pertain to dissemination of information to private entities and State and local agencies for licensing and employment purposes.

There is no such limitation, for example, in the Justice regulations regarding dissemination of that kind of information—that is to say, arrest information—to Federal agencies.

The area of possible confusion is that in the Justice Department's letter reference is made to such access as enabling the Commission to be in a better position to make informed decisions re-

garding security clearances. It is not the Commission's intent that it would be conducting access authorization programs, but rather that the nuclear industry would be.

So we were uncertain as to what the Justice Department position would be on this precise point, but I would not presume to speak for them.

Senator DENTON. As chairman of the subcommittee, I am aware of and leery about the possibility that innuendo regarding an arrest would be used against and in prejudice of a person's application for a position providing him or her access.

On the other hand, I am not sure that I can strongly embrace the concept that the same provisions and balance between protection of rights and security should apply on the one hand to a person applying for a job in a bank where money is a problem, being stolen or embezzled, and access to a nuclear facility with potential for causing a so-called nuclear accident or even worse, with the hazarding or taking of many lives at stake.

Mr. MALSCH. Well, as I say, I think that is a judgment call. The regulations which are currently before the Commission for approval provide reference only to convictions rather than arrests. But as I say, that is a judgment call which the Commission has made and which, of course, the Congress is also fully free to make.

Senator DENTON. In the revised bill language you provided with your testimony, in addition to excluding from the criminal history record provided to the licensee information on arrest data more than 1 year old not accompanied by dispositions, the language would not overcome Privacy Act restrictions on the dissemination of the information.

In your view, does the revised language giving the NRC rulemaking authority on the use and dissemination of information overcome the safeguards of the Privacy Act?

Mr. MALSCH. That was not our intent in adding that language to the bill. It would not be our intent to do so in putting out those kinds of regulations.

Senator DENTON. The language of the bill calls for you to designate, in consultation with the Attorney General, a person or persons to receive the criminal history data for the licensees—a central clearinghouse, as it were. What agency, or whom do you have in mind to perform this function?

Mr. MALSCH. I am not sure, Senator. I will have to ask Mr. Mausshardt, who is Deputy Director of our Office of Nuclear Materials and Safeguards, if he has any more recent information.

Senator DENTON. Mr. Mausshardt, you may assist in response to this.

STATEMENT OF DONALD B. MAUSSHARDT

Mr. MAUSSHARDT. Senator, we were considering using the Edison Electric Institute to assist us in the management of this process if, in fact, certain rules had been processed, and this would be operating basically the clearinghouse.

Senator DENTON. We have a man, as you know, from Edison who will testify in the next panel.

Mr. MAUSSHARDT. Yes, sir.

Senator DENTON. Thank you, and unless you have anything else either of you care to offer at this time, those are all the questions we will submit during the hearing. You may expect further written questions, to which we will request prompt answers.

Mr. MALSCH. Thank you very much, Senator. We appreciate the chance to appear before you.

Senator DENTON. Thank you, sir.

[The following statement was received for the record:]

PREPARED STATEMENT OF HERZEL H. E. PLAINE

OFFICE OF THE GENERAL COUNSEL

U.S. NUCLEAR REGULATORY COMMISSION

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM PLEASED TO HAVE THE OPPORTUNITY TO TESTIFY ON S. 2470, THE PROPOSED "ANTI-NUCLEAR TERRORISM ACT OF 1984."

THE COMMISSION RECOMMENDS ENACTMENT OF S. 2470 SUBJECT TO CERTAIN MODIFICATIONS TO LIMIT THE TYPE OF CRIMINAL HISTORY RECORD INFORMATION SUBJECT TO ACCESS, AND TO CLARIFY THE NRC'S AUTHORITY TO REGULATE LICENSEE USE AND REDISSEMINATION OF SUCH CRIMINAL HISTORY INFORMATION. ENACTMENT OF S. 2470, AS MODIFIED, IS RECOMMENDED AS A MEANS OF FACILITATING NUCLEAR REACTOR LICENSEE EFFORTS TO OBTAIN CRIMINAL HISTORY RECORDS, AND OF PROMOTING UNIFORMITY IN INDUSTRY-CONDUCTED PERSONNEL SCREENING PROGRAMS.

I BEGIN BY NOTING THAT NUCLEAR POWER REACTOR LICENSEES HAVE LONG BEEN INVOLVED IN EFFORTS TO ASSURE THE SECURITY OF THEIR FACILITIES. ONE OF THE WAYS LICENSEES ATTEMPT TO COUNTER THE INSIDER THREAT IS THROUGH EMPLOYEE SCREENING PROGRAMS WHICH INCLUDE BACKGROUND INVESTIGATIONS TO ESTABLISH PERSONAL TRUSTWORTHINESS AND RELIABILITY. AN IMPORTANT ELEMENT OF THE BACKGROUND INVESTIGATION IS THE CRIMINAL HISTORY CHECK. THE COMMISSION HAS ENDORSED THESE INDUSTRY-RUN CLEARANCE PROGRAMS FOR PERSONNEL AT NUCLEAR POWER PLANTS AND HAS RELIED, FOR THIS PURPOSE, ON LICENSEE ADHERENCE TO THE EMPLOYEE SCREENING GUIDANCE CONTAINED IN AMERICAN NATIONAL STANDARD INSTITUTE (ANSI) "INDUSTRIAL

SECURITY FOR NUCLEAR POWER PLANTS" (ANSI N18.17). CURRENTLY, THE COMMISSION HAS UNDER CONSIDERATION A PROPOSED INSIDER-SAFEGUARDS RULE WHICH REQUIRES NUCLEAR REACTOR LICENSEES TO ESTABLISH PERSONNEL SCREENING PROGRAMS FOR EMPLOYEES REQUIRING UNESCORTED ACCESS TO VITAL AND PROTECTED AREAS OF A REACTOR AND WHICH PROVIDES CRITERIA TO GUIDE LICENSEES IN MAKING THE DECISION AS TO ACCESS AUTHORIZATION. WITH RESPECT TO PRIOR CRIMINAL HISTORY, THE PROPOSED RULE WOULD PROVIDE THAT CONVICTION OF ANY FELONY, OR SERIES OF LESSER OFFENSES INDICATING HABITUAL CRIMINAL TENDENCIES WILL BE CONSIDERED IN DETERMINING AN INDIVIDUAL'S ELIGIBILITY FOR ACCESS AUTHORIZATION.

ONE COMMISSION GOAL IN DEVELOPING THE INSIDER-SAFEGUARDS RULE IS TO ACHIEVE GREATER UNIFORMITY IN THE OPERATION OF PERSONNEL SCREENING PROGRAMS THROUGHOUT THE NUCLEAR INDUSTRY. THERE WAS GENERAL AGREEMENT AMONG THE PARTICIPANTS IN THE RULEMAKING PROCEEDING THAT THERE IS A NEED TO HAVE GREATER UNIFORMITY IN INDUSTRY-CONDUCTED SCREENING PROGRAMS.

LOCAL AND STATE LAWS REGULATING DISSEMINATION OF CRIMINAL HISTORY INFORMATION HAVE RESULTED IN A WIDE VARIANCE IN THE TYPE AND QUALITY OF CRIMINAL HISTORY INFORMATION AVAILABLE TO LICENSEES. ENACTMENT OF S. 2470 WOULD PROMOTE GREATER UNIFORMITY IN INDUSTRY-CONDUCTED PERSONNEL SCREENING PROGRAMS BY ASSURING THAT ALL LICENSEES WOULD BASE THEIR ACCESS DETERMINATIONS ON THE SAME KIND OF CHRI.. AS WILL BE EXPLAINED, THERE IS WIDE DIVERSITY IN THE KIND OF CHRI THAT IS AVAILABLE TO LICENSEES OPERATING IN DIFFERENT STATES.

AT PRESENT, THE ONLY SIGNIFICANT FEDERAL REQUIREMENTS FOR STATE OR LOCAL CRIMINAL HISTORY USE OR MAINTENANCE, INCLUDING USE AND MAINTENANCE OF INFORMATION OBTAINED FROM THE FBI, ARE IN THE CRIME CONTROL ACT OF 1973, P.L. 93-83, 42 U.S.C. 3701, ET SEQ., AND IN REGULATIONS ISSUED ORIGINALLY BY THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION (LEAA), 28 C.F.R. PART 20, AND NOW ADMINISTERED UNDER THE JUSTICE SYSTEMS IMPROVEMENT ACT (JSIA). THE PRACTICAL EFFECT OF THESE REGULATIONS IS TO VEST IN STATE AND LOCAL GOVERNMENTS THE AUTHORITY TO ESTABLISH THEIR OWN CHRI DISSEMINATION POLICIES. STATES AND LOCALITIES CAN SET THEIR OWN STANDARDS AND HAVE DONE SO. AS A RESULT, THE AVAILABILITY OF CHRI IS ENTIRELY DEPENDENT ON STATE AND LOCAL LAW AND MAY VARY EVEN BETWEEN THE POLITICAL SUBDIVISIONS OF A PARTICULAR STATE.

WIDESPREAD DIVERSITY IS EVIDENT EVEN IF WE LIMIT OUR ANALYSIS TO LEGISLATION AT THE STATE LEVEL. ALTHOUGH THE RULE IN THE MAJORITY OF STATES CONTINUES TO BE THAT PRIVATE EMPLOYERS CAN AND DO OBTAIN CONVICTION DATA, THE FACT IS THAT THE INFORMATION OBTAINED BY ONE LICENSEE MAY BE RADICALLY DIFFERENT FROM THE INFORMATION AVAILABLE TO ANOTHER LOCATED IN A DIFFERENT STATE.

ALL FIFTY STATE JURISDICTIONS NOW HAVE SOME TYPE OF OPEN RECORD OR FREEDOM OF INFORMATION ACT. A REVIEW OF SEVERAL OF THESE ACTS INDICATES A LACK OF UNIFORMITY IN THE AUTHORITY FOR WITHHOLDING SOME TYPES OF CRIMINAL JUSTICE INFORMATION. THE CLEAREST EXAMPLE PERTAINS TO NON-CONVICTION DATA WHICH IS ONLY AVAILABLE IN NINE STATES. THERE ARE ALSO LIMITATIONS ON THE AVAILABILITY OF CONVICTION

DATA THAT HAVE SIGNIFICANT EFFECTS ON THE TYPE OF INFORMATION AVAILABLE. ONE EXAMPLE INVOLVES RESTRICTIONS TO ACCESS IF AN INDIVIDUAL HAS NO FURTHER INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM FOR SOME SPECIFIED PERIOD OF TIME. THE TIME PERIOD FOR AN ACCESS RESTRICTION TO BECOME OPERATIVE MAY VARY FROM STATE TO STATE. AS A GENERAL RULE, THE TIME PERIODS RANGE BETWEEN THREE TO FIVE YEARS FOR MISDEMEANORS AND FELONIES NOT INVOLVING VIOLENCE, AND BETWEEN SIX TO TEN YEARS FOR SERIOUS FELONIES. VARIATIONS ALSO EXIST WITH RESPECT TO THE TYPES OF CRIMES SUBJECT TO ACCESS RESTRICTIONS. FINALLY, SOME STATES PERMIT ACCESS TO ALL CONVICTION DATA IN CIRCUMSTANCES OF ESPECIALLY SENSITIVE EMPLOYMENT RESPONSIBILITIES AND THERE IS A LACK OF UNIFORMITY WITH RESPECT TO THE OCCUPATIONS DEEMED TO WARRANT SUCH ACCESS.

THE ABOVE LACK OF UNIFORMITY IN THE CONVICTION DATA AVAILABLE TO LICENSEES CAN BE SUBSTANTIALLY REMEDIED BY ALLOWING NUCLEAR REACTOR OPERATORS DIRECT ACCESS TO THE NATIONAL CRIME INFORMATION CENTER (NCIC) DATA RELEVANT TO THE RULE REQUIREMENTS. HOWEVER, SPECIFIC LEGISLATION IS REQUIRED.

THIS FBI SERVICE IS PROVIDED ONLY TO GOVERNMENT OR PRIVATE ENTITIES SPECIFICALLY AUTHORIZED BY STATUTE. THE FBI ORIGINALLY DISSEMINATED CHRI INDISCRIMINATELY TO PUBLIC OR PRIVATE ENTITIES. HOWEVER, IN MERNARD V. MITCHEL, 328 F. SUPP. 718, 725-728 (D.D.C. 1971) REV'D. ON OTHER GROUNDS, 498 F.2D 1017 (1974), A U.S. DISTRICT COURT INTERPRETED THE STATUTE WHICH AUTHORIZES THE FBI TO COLLECT CRIMINAL RECORDS (28 U.S.C. 534) AS CONTAINING AN IMPLICIT PROHIBITION OF

DISSEMINATION TO PRIVATE ENTITIES AND TO STATE AND LOCAL NON-CRIMINAL JUSTICE AGENCIES. THE FBI, ACCORDINGLY, AMENDED ITS REGULATIONS TO PROHIBIT CHRI DISSEMINATION TO THE GENERAL PUBLIC OR PRIVATE SECTOR EMPLOYERS, EXCEPT IN LIMITED CIRCUMSTANCES NOT RELEVANT HERE.

THE MERNARD DECISION WAS, HOWEVER, PARTIALLY SUPERSEDED. CONGRESS, IN PUBLIC LAW 92-544, AUTHORIZED THE FBI TO DISSEMINATE CHRI TO OFFICIALS OF FEDERALLY CHARTERED OR INSURED BANKING INSTITUTIONS AND TO OFFICIALS OF STATE AND LOCAL GOVERNMENTS FOR PURPOSES OF EMPLOYMENT AND LICENSING DECISIONS, IF AUTHORIZED BY STATE STATUTE AND APPROVED BY THE ATTORNEY GENERAL. FOLLOWING PUBLIC LAW 92-544, CONGRESS ALSO AUTHORIZED DISSEMINATION TO PRIVATE ENTITIES ENGAGED IN CERTAIN SECURITIES TRANSACTIONS, SUCH AS BROKERAGE HOUSES. 15 U.S.C. 78(F). IN THESE INSTANCES, HOWEVER, THE FBI IS FORBIDDEN BY REGULATION FROM RELEASING RECORDS OF ARRESTS WITHOUT INFORMATION ON THE DISPOSITION OF SUCH ARRESTS WHERE NO ACTIVE PROSECUTION IS PENDING AFTER ONE YEAR AND THE INDIVIDUAL IS NOT A FUGITIVE. IF INFORMATION ON DISPOSITION IS NOT AVAILABLE AT THE TIME OF A REQUEST, THE HISTORY WILL NOT INDICATE THAT THE INDIVIDUAL WAS ARRESTED.

AS PRESENTLY DRAFTED, S. 2470 WOULD PROVIDE LICENSEES ACCESS TO SUCH ARREST DATA, THUS OVERRIDING DEPARTMENT OF JUSTICE POLICY AND REGULATIONS WHICH LIMIT ITS DISSEMINATION FOR EMPLOYMENT AND LICENSING PURPOSES TO FEDERAL AGENCIES, AS OPPOSED TO PRIVATE ENTITIES. SEE 28 C.F.R. §50.12. WE BELIEVE THAT DOJ POLICY IS SOUND AND DO NOT SUPPORT LICENSEE ACCESS TO ARREST INFORMATION WITHOUT DISPOSITIONAL DATA. IN OUR VIEW, SUCH DATA OFTEN SUFFERS DEFICIENCIES IN ITS

ACCURACY, PROBATIVE VALUE AND RELEVANCY. FURTHER, IT IS NOT NECESSARY. THE CRITERIA FOR ACCESS DETERMINATION IN THE PROPOSED SECTION 73.56(B) DO NOT AUTHORIZE DENIAL OF ACCESS BASED ON THE FACT OF AN ARREST. ON THE CONTRARY, IT MERELY PERMITS THE LICENSEE TO CONSIDER THE FACT OF A "CONVICTION OF A FELONY OR SERIES OF LESSER OFFENSES INDICATING HABITUAL CRIMINAL TENDENCIES."

FINALLY, WE BELIEVE THE BILL SHOULD ALSO BE MODIFIED TO RECOGNIZE EXPLICIT COMMISSION AUTHORITY TO REGULATE LICENSEE USE AND REDISSEMINATION OF CHRI OBTAINED BY LICENSEES. I HAVE SUBMITTED WITH MY TESTIMONY DRAFT BILL LANGUAGE THAT WOULD EFFECT THE SUGGESTED MODIFICATIONS.

DRAFT BILL

To provide federally licensed and regulated nuclear power facilities access to certain federal criminal history records.

Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, that the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended by adding at the end thereof a new section 112 as follows:

"SEC 112

The Commission may by rule require each applicant for, or holder of a utilization facility license pursuant to sections 103 or 104b, to develop and maintain a program whereby individuals allowed unescorted access to designated areas of the facility are fingerprinted and the fingerprints submitted to the Attorney General of the United States, through a person or persons designated by the Commission in consultation with the Attorney General, for identification and appropriate processing. The applicant for or holder of the license may receive from the Attorney General the results of such search except for arrest data more than one year old not accompanied by dispositions. The Commission may prescribe regulations to establish the conditions for use of information received from the Attorney General or to limit its redissemination."

Senator DENTON. Next we will have a panel consisting of three gentlemen in a position to offer valuable testimony and I want to welcome them this morning: Arthur Lundvall, vice president of Baltimore Gas & Electric Co.; Joseph Deegan, security supervisor of Baltimore Gas & Electric Co., on behalf of Edison Electric Institute; and David Hinman, manager of corporate security for the Alabama Power Co., and a special welcome to you, sir, from my beloved home state. I will be seeing your boss later on today.

Do all three of you have opening statements?

Mr. LUNDVALL. Yes.

Senator DENTON. If so, proceed in the order in which I recognized you. Mr. Lundvall, why do you not go first?

STATEMENTS OF ARTHUR E. LUNDVALL, VICE PRESIDENT, BALTIMORE GAS & ELECTRIC CO.; JOSEPH G. DEEGAN, GENERAL SUPERVISOR, LOSS PREVENTION SECTION OF SECURITY SERVICES, BALTIMORE GAS & ELECTRIC CO., ON BEHALF OF THE EDISON ELECTRIC INSTITUTE; AND DAVID HINMAN, MANAGER OF CORPORATE SECURITY, ALABAMA POWER CO.

Mr. LUNDVALL. Thank you, Mr. Chairman. I appreciate this opportunity to present testimony in favor of S. 2470. My name is Arthur Lundvall and I represent three separate organizations in my appearance before you today.

As the vice president of the Baltimore Gas & Electric Co., I am responsible for the operation of one of the most productive nuclear power plants in the United States. Also, I am chairman of the Nuclear Power Executive Advisory Committee of the Edison Electric Institute. The Edison Electric Institute, or EEI, is an association of investor-owned electric utilities in the United States. Its members serve over 67 million customers and provide 78 percent of the Nation's electric power. Included in our membership are 47 electric utilities that operate nuclear power plants.

Finally, I also represent the members of the American Nuclear Energy Council. ANEC represents over 100 organizations having an interest in nuclear power, including private, public and cooperatively owned utilities, manufacturers, engineers, architects, and various other firms with a nuclear interest.

Senator DENTON. Sir, may I interject a question just for my own personal curiosity? You are chairman of the Nuclear Power Executive Advisory Committee of the Edison Electric Institute, and EEI is the association of investor-owned utilities. Its members serve over 67 million customers and provide 78 percent of the nation's electricity.

How much of that, in terms of customers and percentage of electricity, is nuclear-power supplied?

Mr. LUNDVALL. Last year, the nuclear industry provided about 12 percent of the total electric power disseminated in the United States.

Senator DENTON. All right, sir. Thank you very much. Go ahead.

Mr. LUNDVALL. From each of these positions, I wholeheartedly endorse and encourage the enactment of S. 2470 now before your subcommittee. But before proceeding further, I would like to pro-

vide you with a visual example of a nuclear powerplant and highlight some of the secured areas.

The first drawing that my assistant has depicts an overhead view of a typical facility. We have highlighted the protected area of this plant, the area outlined in red. Note the double fencing, the entry control points, the closed-circuit television cameras, and there is an elaborate alarm system. Additionally, there are armed security officers on duty at all times, and most of the internal entrances beyond the protected area within the vital area of the plant require a special card key device for entry.

In the second drawing we have highlighted what I previously referred to as the vital areas of the plant itself. These areas are quite sensitive to our operation and possible acts of sabotage are of considerable concern.

Senator DENTON. Could you locate that on the larger drawing just to orient me better? Where would that be, that portion that you have blown up?

Mr. LUNDVALL. That would be the two orange circles, which represent the containment structures of the nuclear powerplant, and the blue in between them, which represents the auxiliary building where certain key and vital elements of the nuclear operation are centered.

Senator DENTON. Thank you, sir.

Mr. LUNDVALL. For many years, the nuclear industry has held that the primary physical threat to our facilities is externally based terrorism. Recently, the NRC has indicated, and I believe rightly so, that the insider threat is also of significance.

We may go so far as to postulate that for a terrorist act to be successful, an inside accomplice may be necessary. We are satisfied that the nuclear industry has implemented measures to protect our facilities against external dangers. Conversely, we should have the full capability of countering the possible internal threat.

A number of incidents have occurred over the past several years indicating that insiders, employees, or contractors cleared for unescorted access to the facilities, have tampered with or vandalized certain safety-related equipment. Valves mysteriously opened or closed, cabling cut, stored fuel assemblies damaged, and unexplainable pump failures are examples of incidents in some cases traceable to employee or contractor involvement.

In 1979, for example, two employees at a southeastern plant damaged several fuel element assemblies by intentionally pouring caustic soda over them. In 1981, at a northeastern facility, a manually operated valve in the safety-injection system, normally open, was found shut and the chain and padlock used to secure the valve were missing.

I would like to stress that no insider-based incidents progressed to the point of endangering the public health and safety. But these events do suggest that the potential harm due to malevolent insider activity is a legitimate concern.

Senator DENTON. For the record, sir, did you say these events do or do not suggest?

Mr. LUNDVALL. These events do suggest.

Senator DENTON. Thank you.

Mr. LUNDVALL. They do suggest that the potential harm due to malevolent insider activity is a legitimate concern.

Nuclear powerplants have effective security programs that may include a system for psychological evaluation of potential employees and the conduct of a background investigation that involves limited State and local police record checks. This system would be significantly improved with the enactment of S. 2470 since it would provide a uniform system for background investigations throughout the industry.

Each individual's complete criminal history will be reviewed and we can be assured that, to the maximum extent possible, only stable, reliable, and law-abiding people have unescorted access to vital areas of our nuclear powerplants.

Our intention is to provide cost-effective electric power, and this must be done in a safe and secure manner that protects both the public and the environment. S. 2470 will enable us to do a better job.

Mr. Chairman, this concludes my prepared remarks. As a continuation, providing some greater detail, I would like to now introduce Mr. Joseph Deegan of our company, who is responsible for security programs associated with our Calvert Cliffs nuclear powerplant.

Mr. Deegan will be followed by Mr. David Hinman of the Alabama Power Co., who will reference his experience as an industrial security specialist in support of S. 2470.

Finally, Mr. Chairman, with your permission, I would like to submit for the record the testimony of Mr. Street, manager of corporate security for Portland General Electric Co., and chairman of the Edison Electric Institute's security committee.

Senator DENTON. Without objection, Mr. Street's testimony will be included in the record.

[The following statement was received for the record:]

PREPARED STATEMENT OF M. C. STREET

My name is M. C. Street. I am the General Manager, Corporate Security Department, Portland General Electric Company (PGE), Portland, Oregon. Prior to my current employment since 1976, I was with the Federal Bureau of Investigation for 25 years. I am also the Chairman of the Security Committee, Edison Electric Institute, the association of investor owned utilities, which includes 47 electric utilities that operate nuclear power plants.

PGE is the licensee of the Trojan Nuclear Power Plant. Among my responsibilities is the background screening program for unescorted access by individuals employed at the Trojan plant.

By letter dated June 8, 1984, to the Honorable Jeremiah A. Denton, James W. Durham, senior Vice President and General Counsel, PGE. stated, "Portland General Electric Company endorses the concept of S. 2470 * * *." The membership of the EEI Security Committee endorses S. 2470 as a much needed tool to assist them with their responsibilities to the industry and the public.

For many years, the nuclear power industry has been committed to the U.S. Nuclear Regulatory Commission to assure that only trustworthy individuals have unescorted access in nuclear power plants. The industry has met this commitment by conducting a background investigation of each individual to the extent allowed by state and local laws. In many cases, however, these laws have kept the industry from meeting the full intent of federal requirements.

An essential element of a responsible employee screening program is the ability to establish the true identity and the criminal history of an individual. S. 2470 is considered to be enabling legislation to provide heretofore unavailable criminal history information and evidence confirming or refuting identity.

Only the records of the Federal Bureau of Investigation have the nationwide scope required for a reliable check of a person's true identity and criminal history. These records must be reviewed for the discovery of individuals who have been arrested for crimes committed in state and local jurisdictions other than their places of residence and employment and who have not admitted to these arrests on their personal history statements submitted to their employers. Such crimes are not detectable by the restricted investigation now performed at the locations of residence and employment listed by a person applying for a security clearance.

The true identity for a person using false identification may also be established by a fingerprint check. This is important for the detection of known criminals or other persons who may be seeking entry to a nuclear power plant using false credentials. Also, it could certainly be postulated that a fingerprint program with the FBI may deter terrorists and would-be saboteurs from attempting to gain access to nuclear power plants.

The NRC, and certainly the public, expects the industry to provide safely operated nuclear power plants. We must guard against the potential threat of a malevolent person gaining access to restricted and vital areas of our nuclear plants. A fingerprint check of FBI records will provide the legal means for the industry to do a better job to protect the interests of the public.

Federal statutes require other industries such as banking and securities to send fingerprints of employees to the FBI. The American Bankers' Association and the Securities Exchange Commission administer the program for their affiliates. A similar arrangement can be provided for the nuclear power industry. In addition, nuclear facilities under the operating jurisdiction of the federal government (e.g., Department of Energy) do have the authority under the Atomic Energy Act of 1954 and/or Executive Orders to obtain an FBI fingerprint check.

Given the threat of terrorism, with which we are unfortunately confronted, and the malevolent element in our society, a check of federal criminal history files is considered essential if we are to provide the assurance that is expected for nuclear power plant security. The efforts of this committee to provide the legal means for the industry to do a better job to protect the interests of the public is appreciated. I urge prompt enactment of S. 2470.

Senator DENTON. Thank you, Mr. Lundvall, for your testimony. Go ahead, Mr. Deegan.

STATEMENT OF JOSEPH G. DEEGAN

Mr. DEEGAN. Thank you, Mr. Chairman. My name is Joe Deegan, as identified, and I am employed at the Baltimore Gas & Electric Co. as a general supervisor for the loss prevention section of security services.

Included in my duties is a responsibility to supervise the organization that does the planning for security operations at our nuclear plant. Prior to my current employment, I was chief of the extremist section with the Federal Bureau of Investigation. I spent 26 years with the FBI prior to my retirement, when I joined the Baltimore Gas & Electric Co. That was 7 years ago.

I fully support the enactment of S. 2470. It is to be noted that the system used by the nuclear industry for gathering background information is good, but like any system there is room for improvement.

The major problem faced by all of us in the nuclear field is the lack of a complete system for obtaining criminal history information. A 1983 survey of laws regarding access to criminal history records indicates that there is a great difference between the States.

For example, an individual applies for a job at our nuclear plant. Through an agreement with our State and local police, we have access to their criminal records and can review them. These

records are for activities that took place in the State of Maryland only.

If the applicant is from the State of Delaware or Virginia, two of our close, neighboring States, we are stymied because Delaware and Virginia are 2 of 12 States that flatly refuse access to private industry concerning criminal histories. The applicant could have committed a major crime in Virginia or Delaware and we would have no way of knowing it.

Bear in mind also that the nuclear industry employs a large number of transit contract workers that move from facility to facility, performing a number of important functions. Many of these functions require that they have unescorted access to what we call vital areas.

S. 2470 provides us with a uniform, nationwide system for ensuring that these workers are the types of individuals that should be granted access to our nuclear plants.

One provision of the bill which some believe to be controversial is that we should have access to an individual's complete criminal history, meaning both conviction and arrest records.

In today's criminal justice system, pretrial agreements and overly crowded court dockets can often result in an individual not being brought to trial. An arrest record can be a solid indicator of a person's character.

Personally, I feel that an individual with a multiple-arrest record should be closely scrutinized before a decision is made to hire them. Access to complete criminal-history records provides us with a vehicle to accomplish this security.

Mr. Chairman, the airline industry, the banking profession, and the securities business all have the capacity to verify, through thorough background investigations, the trustworthiness of their employees. I feel an industry as sensitive and as critical as the nuclear-power industry deserves the same capability.

This concludes my prepared remarks. I am being followed by Mr. David Hinman.

Senator DENTON. All right. Before we leave you, Mr. Deegan, just to make sure I understand you, they have, you say, these three industries and professions, the capacity to verify, through background investigation, the trustworthiness of their employees.

But they, as I understood it from previous testimony, do not enjoy access to arrest records without convictions.

Mr. DEEGAN. Yes; we in the Baltimore Gas & Electric Co. are our own stockbrokers, so we come under the regulations of the Securities and Exchange Commission. We fingerprint certain key employees that the law requires and we send them in to the FBI and we get the complete criminal history record back.

Senator DENTON. Including arrests without convictions?

Mr. DEEGAN. Including arrests without convictions.

Senator DENTON. I understood from previous testimony that if the arrest took place a year before the conviction, that is the dividing line on the access to that information.

Mr. DEEGAN. I am not familiar with that aspect of it. Now, I am not saying it is right, wrong, or indifferent. I know that as a result of fingerprinting our employees, we receive the criminal history

record back. There is no notation on there of any restriction of that kind that I know of.

Senator DENTON. Our understanding is that 28 CFR 50.12, as a matter of Justice Department policy, precludes availability of non-disposition arrest records which are more than 1 year old, and that is an issue in the preparation of this piece of legislation.

Mr. DEEGAN. I am not familiar with the matter, but I do see criminal history records come back and some of them have no dispositions on them. Now, whether this is in error, I do not know.

Senator DENTON. Mr. Hinman.

STATEMENT OF DAVID HINMAN

Mr. HINMAN. Thank you, Mr. Chairman. My name is David Hinman. I manage the corporate security operations of Alabama Power Co. at Birmingham. I have been in this field of industrial security for the past 23 years, and established the security department at Alabama Power Co. in January 1973.

My position includes general responsibility for investigations and loss prevention on behalf of the company. One of the tasks critical to fulfilling this function is the conducting of adequate background investigations on individuals being employed to fulfill responsibilities in certain sensitive areas.

This task is most critical in connection with background investigations which must be conducted as to employees of our nuclear plant, the Joseph Farley nuclear plant near Dothan, AL.

Several years ago, we were faced with the problem of conducting investigations in which the NRC would have expected us to check fingerprint records at the national level. Notwithstanding that expectation, we were denied access to those records.

As we began our program of fingerprinting employees, we accumulated approximately 250 sets of employee fingerprints, and finally submitted them directly to the Department of Justice, not knowing if or when we would get them back. Eventually, reports of the results of this check were returned to us, and I believe because of the efforts of another agency which was sympathetic to our needs. I do not know for certain how this was handled, but we did get back the 250 sets of prints and the results were rather interesting.

Where the fingerprint cards could be matched with those of individuals who had arrest records, we received the complete criminal history record. Approximately 16 percent of the fingerprint sets were returned with such records attached.

Among those of particular interest were two of our uniformed armed guard personnel who had in the past been incarcerated on felony charges, one for burglary, and the other one had served 18 months for auto theft and a less period of incarceration for aggravated assault on a female.

Although the assault charge on the FBI record reflected no disposition, we were able to obtain disposition from the arresting agency. Now, this guard had failed to indicate these convictions on employment applications and during interviews at the time he was being considered for employment.

He had been employed for approximately 1 year, and during that time had been issued a company firearm, had participated in a

comprehensive security training program, and was privy to all of the security procedures at our nuclear plant.

It is against the policy of Alabama Power Co. to employ a convicted felon in a position which requires that person to possess a firearm. Had the company had access to a means of checking such arrest records, the particular individual would not have been employed in such a capacity.

We have had several other instances where applicants for other types of employment at our nuclear facility have failed to disclose convictions for crimes committed in the past. Several have been identified with drug convictions, including use and sale of controlled substances, firearms violations, and burglary.

Clearly, we must be in a position to gain access to criminal history records for a complete and thorough background investigation where the nature of the prospective employment makes such information vital.

We have other guard forces in our company assigned at our nonnuclear facilities on whom background investigations are equally important. These individuals are involved in property protection for facilities such as electric generating facilities which are vital to the public interest. But more importantly, we must draw from this force as reserves during any emergency which might arise at our nuclear plant, which would include a major sickness of all of our guard force.

The location of our nuclear plant is in close proximity to two other States, Georgia and Florida. Many of our employees live in those States. The cooperation of Alabama law enforcement agencies with our efforts has been excellent.

While we have not had any problems with agencies in Georgia and Florida, our communication with these agencies is not as well developed. We need the benefit of quick and ready access to arrest records which might provide help otherwise not available to us in screening prospective employees for these vital jobs.

As you know and have heard from other testimony, the high mobility of a work force in the United States frequently results in employment applications at nuclear facilities from individuals who have worked and lived in any of the 50 States. They could have arrest records in any of those States.

We are very sensitive to the concerns of any employee about the existence of an arrest record. Where we discover that an employee has been arrested without any indication of disposition of the arrest, our department makes no disclosure to anyone in the company of such discovery until we have an opportunity to verify the circumstances surrounding the arrest and determine the disposition of the arrest.

We undertake to interview the employee who has been arrested so that he has an opportunity to offer mitigating circumstances or other explanations. Only after verification of all available facts do we furnish the results of our investigation to a senior officer of the company who is responsible for making the final judgment as to whether or not the criminal history and other available information would impact on the performance of the job for which the individual is to be employed.

37-785 O - 84 - 12

We are equally concerned that the failure of our company to obtain criminal history records based on fingerprint identification can permit dissidents, terrorists, and would-be saboteurs an opportunity for employment at our nuclear plant, using falsified birth records and other falsified credentials.

Moreover, we feel it imperative that access to such records be provided to assure that employment in sensitive positions be conducted based on full information as to the trustworthiness of the individual.

We urge your enactment of S. 2470 as you have introduced it. Gentlemen, the three of us would be happy to respond to any other questions you might have.

Senator DENTON. Thank you very much, Mr. Hinman. What was the agency to which you referred, sympathetic to you, which finally got you the results of the checks on the fingerprints?

Mr. HINMAN. In looking at the fingerprint cards, when we submitted the cards to the FBI they had a number as a submitting agency—the number of the Department of Public Safety in Alabama, I believe; the Alabama Bureau of Investigation.

When they came back, there was another label over the top of that showing DOE, which I assume is the Department of Energy.

Senator DENTON. Well, I am developing the impression that we have, at best, a nonuniform, haphazard, helter-skelter, and distinctly unreliable system for the kind of checks which are needed. As to how to word this precisely, we have to be careful.

Of course, Mr. Deegan mentioned that in the case of Delaware and Virginia, you cannot get any access at all from the point of view of private industry for the records on arrest, including convictions. So the nonuniformity appears to be widespread.

It would appear that the overly crowded court dockets are a consideration in setting some kind of a timeframe. The primary consideration, I suppose, should be ensuring against the loss of life, destruction of property, that sort of thing, with due regard for the rights and privacy of individuals.

I do not think we are approaching that yet and this bill is intended to be an improvement.

Mr. Lundvall mentioned that in 1979 two employees at a southeastern plant damaged several fuel assemblies by intentionally pouring caustic soda on them. In 1981, at a northeastern facility, a manually operated valve was found shut and the chain and padlock used to secure the valve were missing.

May I ask, in the subsequent investigations, what appeared to be the motives of those people? Were they just nutty, or what were they?

Mr. LUNDVALL. Senator, it is my understanding that the individuals involved with the damage to the fuel elements were eccentrics, perhaps wanting to draw attention to their own cause, whatever that might have been, and they did damage. They were apprehended and the exact disposition of the case is not familiar to me. I understand they were punished in some fashion, but I am not sure what it was.

Senator DENTON. You do not recall whether they had manifested some advocacy for a particular cause that you can recall?

Mr. LUNDVALL. Well, I gathered that they were antinuclear activists, is the only way I can put it.

Senator DENTON. Well, we have them by the tens of millions, I guess, and there will not be any convictions or arrests in most of those cases. And I would, of course, be treading on very thin ice were I to suggest that someone with a record of such advocacy be permitted no access to a nuclear facility.

Mr. LUNDVALL. Well, if it is not carried beyond being an advocate of a particular cause, then that is certainly their prerogative.

Senator DENTON. Yes, but these individuals were all convicted?

Mr. LUNDVALL. Yes, sir, as far as I know, they were.

Senator DENTON. Yes.

Mr. LUNDVALL. Insofar as the incident that included closing a valve that should have been open, or vice versa, I do not think they were ever apprehended. I do not think anybody knows who did that.

Senator DENTON. It does give me a little discomfiture. We are all entitled to free speech and to our own opinions. When we get extremely passionate about a personal persuasion that nuclear power is somehow evil and then make manifestations very firmly in that direction, I wonder whether one could not be expected to wait until one was in a position to do something rather demonstrative about it.

We have examples. Judith Alice Clark here—it took over 1 year to get her conviction. She began as an activist in SDS and was charged with such things as aggravated battery during SDS demonstrations; resisting arrest in mob actions in Chicago, IL; disorderly conduct and failure to obey a lawful police order in Chicago.

She was indicted as a consequence, but that was just barely within 1 year. Then she was arrested later by the FBI under those indictments and for flight to avoid prosecution. She was one of the three radicals directly involved in the cold, calculated, and deliberate murders of three people during a $1.6 million Brink's armored car robbery, which was not, as I know from previous study, a matter of pure greed. There was some highly organized terrorism involved in that.

She is now sentenced to 75 years to life for some of those capers, but individuals like that would appear to be capable of getting through the net here. I guess we never will have any full insurance against that, but even if we do draw up this bill and get it passed through Congress, we might have to review this situation perhaps annually to come back to you and see what you think about the way the security has been working in view of this bill's enactment.

Mr. Lundvall, do you support the inclusion of arrest data in the criminal history records provided to you?

Mr. LUNDVALL. Yes, sir.

Senator DENTON. And, of course, you understand I meant without conviction data?

Mr. LUNDVALL. I understand, and I would support the inclusion of that data for the full range of the individual's history.

Senator DENTON. Mr. Deegan, I gather you do, too, and you have obtained such information, although it appears to be outside the realm of DOJ policy at the moment.

Mr. DEEGAN. I would like to add something to that, also. I am in favor of the full criminal history record, and we do obtain criminal history records from the SEC. And I would like to go on record that we do not abuse this privilege. There has been no case of abusing anybody's civil rights because it is handled very sensitively and it is kept confidential.

Senator DENTON. Do you redisseminate such information outside the nuclear community or to the rest of the nuclear community?

Mr. DEEGAN. No. We keep that within our own confines of the BG&E Co. We do not disseminate that information outside at all.

Senator DENTON. How about you, Mr. Hinman? Do you support the availability of the arrest records without conviction data?

Mr. HINMAN. I support having access to the complete criminal history record—all arrests, regardless of disposition—because we would have any number of lead opportunities to verify what the circumstances were on those arrests. And we do know from records we have obtained that we have gotten arrest records with no disposition when, in fact, there had been a disposition and it had not made its way to the FBI records.

Senator DENTON. Would all three of you feel it would be a fair statement to say that we could postulate with justice and sufficient libertarian considerations that the complete criminal records should be made available; that the companies should not be regarded as having a vested interest in denigrating, and libeling, and scandalizing about the records; that their only interest would be in trying to make a common-sense decision about whether or not the person was a justifiable risk; and that if indeed they did spread word about the individual which subjected them to lawsuits, that is something Congress should have in mind before they undertake to restrict you from information, on the assumption that you will disregard all of those things and hurt people's rights?

How do you feel about this? We have got to go to committee on this, you see.

Mr. HINMAN. I would like to respond to that, if I may, because we are a people company and we are very sensitive about how our employees feel about even being investigated in the first place. Some employees just resent being fingerprinted, but we have established credibility with them. We have dealt with that employee himself in every case where we find some unanswered question.

His plant manager does not even know why we want to talk to him, and our records and his fingerprint records are retained in our department, corporate security. They are only checked out if the officer over our nuclear facility had a need to review and not be satisfied with what results we have given him. We are very sensitive to that employee's concern.

Senator DENTON. I feel that it should be mentioned in the context of this hearing that one of the historically established targets of terrorists is the power infrastructure of a nation.

It occurs to me that a famous Italian terrorist, who was also a multimillionaire, died while successfully bombing a big transmission line. He climbed the pylon and accidentally either blew himself up or got electrocuted; I have forgotten which.

While I was in El Salvador for the elections, observing them, the terrorists who were interfering with the elections were quite suc-

cessful in cutting off the power to the capital all during the night. It would be temporarily restored and then blacked out again. And as I flew around the nation in helicopters, I was shown several places where within the past day or two the powerlines had been cut.

So when and if the United States does become an active target for terrorism geographically—and I do not think it has become so yet for reasons we could speculate on—but if it does, I cannot think of a target that would be more likely, both from history and from logic, than one of these installations.

We have the number one KGB target, the peace movement in the United States—the disinformation regarding that which is tied in with antinuclear and other causes as it takes form in Western Europe and in the United States. Not all of those people are bad at all, but it is the No. 1 active-measures aim of the KGB. That is indisputable and established; unfortunately, not well publicized in the United States, but we have irrefutable information, and so does the CIA, on that fact.

Mr. Deegan pointed out in his statement the difficulty of keeping track of transient workers at nuclear facilities. I understand there is a pilot project underway, called the Nuclear Employee Data Systems, to pass necessary data from facility to facility. We have a paper on this project, and, without objection, I will enter it into the record.

[The study referred to above follows:]

NUCLEAR EMPLOYEE DATA SYSTEMS (NEDS): A PILOT PROJECT

by: NEDS Project Manager
Dr. J. Mark Elliott
Richard H. Sutton

One problem that confronts any owner of a large nuclear power station is the efficient in-processing of workers who require unescorted access to the plant. The granting of this level of access, or in-processing, involves determining the worker's previous occupational exposure history, checking his security clearance, determining his health status, checking his ability to wear and use respiratory protective equipment, and determining his training and qualifications for specific work in controlled radiation areas.

This problem is compounded during annual maintenance or forced outages when a large number of transient or temporary workers are required in the plant. This in-processing effort is the responsibility of the plant owner, who currently relies manual procedures for the transfer of information from previous employers. Although the magnitude of this problem varies from plant to plant, typically in-processing requires a three-to five-day effort to grant a worker unescorted access. During this time, the utility incurs administrative costs for in-processing the workers, direct costs for the workers' wages, loss of worker productivity, and extended outages.

During 1969-1980, both the average number of workers per reactor and the total number of workers in the nuclear power industry have increased significantly (see Figures A-1 and A-2). Also, the total number of transient or temporary workers has significantly increased as indicated in Table 1. Because this type of worker is being in-processed at more than one facility, the current method of in-processing is collectively costing the utilities millions of dollars per year in administrative and direct labor costs as well as delays in outages.

The nuclear industry's problem was recognized in 1977 by the Edison Electric Institute (EEI) Construction Committee, which undertook the project of establishing a common file for physical examination records, radiation exposure records, security data, and revisions in local union practices to provide "qualified

FIGURE A-1

AVERAGE ANNUAL WORKERS
PER U.S. REACTOR 1969-1980

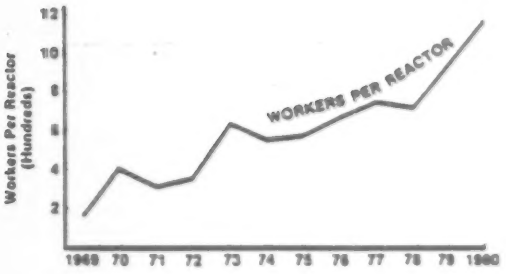
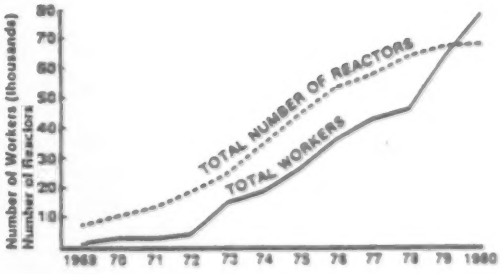


FIGURE A-2

TOTAL NUMBER OF WORKERS
IN ALL U.S. REACTORS 1969-1980



SOURCE: Bromenschenkel, K.E., "Transient Nuclear Worker In-Processing -- A Utility Viewpoint," presented at the American Nuclear Society 1983 Winter Meeting, San Francisco, California.

TABLE 1

TRANSIENT WORKERS AT U.S. NUCLEAR POWER FACILITIES*

Year	Number Of Commerical Reactors	Number of Workers Terminated By Two Or More Licensees
1977	57	3,161
1978	64	3,202
1979	67	4,022
1980	69	5,463

*B.G. Brooks, "Occupational Radiation Exposure at Commercial Nuclear Power Plant Reactors -- 1981," Annual Report, U.S. NRC, NUREG-0713, Vol. 3, 1982.

whole workmen" that would include skills, training, health physics qualifications, radiation records, and background investigations. Subsequently, the EEI Construction Committee decided that it was in the best interest of the nuclear utility industry to have member companies operating nuclear power plants subscribe to a single outside service for a centralized record-keeping system and that the subscribing members ultimately would have control of the system.

The EEI Construction Committee subsequently turned its efforts over to the Atomic Industrial Forum (AIF). Through the efforts of the AIF Subcommittee on Operations and Maintenance and the AIF National Environmental Study Project (NESP), with industry task force support, a study was conducted addressing this problem.

The AIF/NESP study objectives were: to explore the details of the problem and possible solutions, to define the basic requirements of a centralized system, and to provide basic cost-benefit analysis that would be useful to nuclear plant owners for evaluating the development of a centralized system. (Details of this study may be found in the "Study of a Record-keeping System for In-Processing of Transient Workers at Nuclear Power Plants," Atomic Industrial Forum-National Environmental Studies Projects, AIF/NESP-025, June 1982.) The study concludes that there should be a cooperative effort by all utilities, as well as nuclear service companies, to develop a centralized computer data base system that may be mutually accessed, with discretion, to obtain basic historical data on employees at nuclear power plants. This approach to the existing problem will expedite the acquisition of historical data, thus reducing the time

to in-process workers and reducing administrative time and costs, thereby decreasing downtime and increasing worker productivity.

A follow-up AIF/NESP study titled "Characterization of the Temporary Radiation Work Force at U.S. Nuclear Power Plants" (DRAFT) establishes definitions and categories of temporary radiation workers and associated statistics.

In March, 1983, the EEI Nuclear Power Executive Advisory Committee met to discuss recent developments and renewed interest in the concept of a national data system for nuclear plant employees. Under the umbrella of the Edison Electric Institute (EEI), a Task Force was established to evaluate and guide the possible implementation of a Nuclear Employee Data System (NEDS). Membership on this NEDS Task Force included representation from:

EEI Legal Counsel
EEI Security Committee
EEI Health Physics Committee
EEI Construction Committee
EEI Prime Movers Committee
EEI Industrial Relations Committee

From this Task Force, a group of interested utility representatives, referred to as the NEDS Pilot Utility Group*, were appointed to a NEDS Steering Committee which has been involved with development of the concept of the NEDS. This Steering Committee (Chairman, Arthur E. Lundvall, Jr., BG&E) is responsible for directing the efforts of the following Subcommittees:

NEDS Computer Subcommittee
NEDS Health Physics Subcommittee
NEDS Legal Subcommittee
NEDS Medical Subcommittee
NEDS Training Subcommittee
NEDS Security Subcommittee

Representatives from each of the Pilot Utility Group utilities have members on each of these respective Subcommittees.

In August 1983, the NEDS Steering Committee selected International Energy Associates Limited (IEAL), a private consulting firm in Washington, D.C., as Program Manager of the NEDS Pilot

*The NEDS Pilot Utility Group includes: Baltimore Gas and Electric Company, Commonwealth Edison Company, GPU Nuclear Corporation, Pennsylvania Power & Light Company, Philadelphia Electric Company, Public Service Electric and Gas Company, and Virginia Electric and Power Company.

Project. As Program Manager, IEAL was responsible for the issuance of the Request for Proposals (RFP) to develop the NEDS, and is responsible for assisting the Pilot Utility Group in the selection and management of the System Developer for the NEDS design and implementation.

The NEDS is to be, essentially, a computer-based information management system that will standardize the minimum information that each utility accepts from other NEDS utilities when in-processing a worker as well as information that the utility provides to the NEDS when a worker terminates. Because such information is currently not standardized, the successful implementation of the NEDS will depend on the development of a common set of information requirements, procedures, and documentation. To this end, a comprehensive set of data requirements has been preliminarily identified and can be categorized into areas of:

Personal Information
Security Information
Health Physics Information
Respiratory Protective Equipment Information
Medical Information
Training Information

The major functions of the NEDS will be divided into three categories: data input, data retrieval, and data storage. In meeting these major functions, the NEDS must be able to interface with each pilot utility through either (1) an existing utility mainframe computer (i.e., the utility user interfaces with NEDS via a remote terminal through his mainframe computer to the NEDS) or (2) a separate intelligent terminal/microcomputer that communicates directly with the NEDS.

Because the NEDS will contain sensitive privacy information, every effort will be made to protect the information from unauthorized disclosure. Access to information will be limited to a need-to-know basis to the NEDS utility participants, and use of this information will be exclusively for the purpose for which it was gathered.

The Request for Proposals (RFP) to develop the Nuclear Employee Data System (NEDS) was issued March 1, 1984. Selection of the System Developer, Control Data Corporation, Rockville, Maryland, was made May 29, 1984. It is anticipated the NEDS will be operational as a pilot project by the first quarter of 1985 with funding being provided by the utilities in the NEDS Pilot Utility Group.

Senator DENTON. Could you tell us something more about that paper, Mr. Deegan? It is "Nuclear Employee Data System: A Pilot Project," and it was written by NEDS project manager, Dr. J. Mark Elliott, and Richard H. Sutton.

Mr. LUNDVALL. Senator Denton, perhaps it would be better if I responded to that. The nuclear employee data system is being developed under the sponsorship of the EEI through a subcommittee which I chair.

The nuclear employee data system has the function of developing certain key information relative to transient workers—security information, radiological exposure information, medical history, and that sort of thing. We will develop a data base initially through a pilot group consisting of seven utilities in the Eastern United States.

The data base will be computerized, enabling us to pass the critical information between companies in a very rapid fashion, thereby reducing the time necessary to clear transient workers for entry into the plant.

When we get this system firmly established on a pilot basis, it is anticipated that it will expand. We are not certain at this time just how it will expand, but conceivably it could blanket the United States. We feel it is a very worthwhile thing. It is going to enable us to transmit records more accurately and more quickly. It will give us a better system and it will save the industry money.

Senator DENTON. Thank you, sir.

Mr. Deegan, how many employees, on the average, have unescorted access to the vital areas?

Mr. DEEGAN. It varies from plant to plant. In some plants it may be about 800. In other plants, it could be almost 2,000. It varies on the size and the makeup of the plant.

Senator DENTON. The guards to whom you might have recourse in an emergency mentioned by one of you would fall under this bill as written, as I understand it, because they would under some circumstances be granted access, unescorted?

Mr. DEEGAN. Correct.

Senator DENTON. Assuming this legislation passes, how would you see the system working? What improvements would there be, or disadvantages?

Mr. DEEGAN. The way I would see it working, Senator, is an individual comes for employment to a nuclear plant. He would be fingerprinted. The prints would be sent to a facilitating agency, who in turn would send them to the FBI. The FBI would do their record check, and then send the results directly back to the plant that requested the check be made.

The facilitating agency would keep no records of the results of the check. The only record they would keep would be the fact that it was sent to the FBI. The results of the criminal history check would be kept in the utility's records alone and not disseminated to anybody else.

The only one we would say—in connection with the NEDS system, was an FBI check made? We would say yes. Now, whether the individual was approved for access would be a matter of record, but we would never divulge the criminal history record.

Senator DENTON. Do you want to add something, Mr. Hinman?

Mr. HINMAN. Yes, sir, I do. I think it is particularly important to us in Alabama that the Browns Ferry nuclear plant operated by TVA, under Executive order, has been able to get access to criminal history records from the FBI for 30 years. All of the people who have unescorted access at that nuclear facility—their prints are handled just like we would expect to handle them.

They go to the personnel security operation in Knoxville, which submits them direct to the FBI. They come back with a complete criminal history record attached to them, and I think there is a critical disparity between what they can do and what we cannot do.

Senator DENTON. I wonder if we can estimate the cost of the program and who should pay for it.

Mr. HINMAN. We are prepared to pay for it.

Mr. LUNDVALL. I beg your pardon?

Mr. HINMAN. We would be prepared to pay for it. That is no problem.

Mr. LUNDVALL. The industry would certainly pay the cost. It has been estimated that the cost would be approximately $12 to $15 per transaction. We do not feel that this is excessive. As a matter of fact, it is a good deal less expensive than what it is costing us now to run the inadequate checks that we are currently doing.

Senator DENTON. Do any of you know whether any of the military services have a similar system to do that which is proposed?

Mr. DEEGAN. My understanding is that the military fingerprints all individuals who have access to their nuclear facilities, and they get the results back from the FBI.

Senator DENTON. How often would you feel it necessary to have an employee fingerprinted?

Mr. HINMAN. It is our position that the employee is fingerprinted initially. If there is no other indication of misconduct or change in his behavior, we would not expect to refingerprint him. But we reserve the right to bring up to date any background investigation if the employee has perhaps been arrested in some period of time while he has been employed with the company. We would bring his file up to date, but I do not see it as requiring another set of fingerprints from him. We just resubmit his original prints.

Senator DENTON. Do you have any other incidents involving insider sabotage that you might want to mention?

Mr. DEEGAN. If I may, the Nuclear Regulatory Commission publishes a guide, and its new reg 0525, and it was revised June 30, 1983—it lists events that could be considered vandalism, sabotage, or whatever you might want to call them. But they do list events where things have happened in a nuclear powerplant that gives you good reason as to why you have to scrutinize our employees.

Senator DENTON. We will avail ourselves of that.

Has there ever been an incident where a bomb device has been found inside a protected or vital area, in the knowledge of any of the three of you? We have had a lot of bomb threats, I understand.

Mr. DEEGAN. There has been an incident. I forget the identity of the plant, but there was a bomb device found within a nuclear plant and it exploded, but it did not do any radiological damage.

Senator DENTON. Was any particular group responsible for that, to your knowledge, or was it the act of a deranged individual?

Mr. DEEGAN. The case was not solved, so we do not know who caused the bomb explosion, and it did occur in 1982 and it was a TVA nuclear facility that it happened in. But there was no radiological damage; there was no damage to anybody else. It was just a loud explosion.

Senator DENTON. No one claimed credit for it?

Mr. DEEGAN. No one claimed credit for it.

Senator DENTON. Well, without wanting to stir up any hysteria, what are some of the damaging effects which could be produced by insider sabotage, starting with some of the more simply induceable ones and working up to those which might be induced by a group of terrorists crashing in, which you identified as perhaps the No. 1 possibility?

Mr. LUNDVALL. Well, Senator, starting with things that might be classified simply as mischief, these things are very simple things that could happen—graffiti on the walls and inconsequential things like that—then, advancing beyond that to insiders changing the position of valves without authority, for example, which could cause problems, serious or not so serious depending on which valves are manipulated.

The individual who was doing the manipulation would have to know his way around the plant to know which systems to manipulate in order to do damage or simply to cause mischief and concern to the plant force.

In the extreme, a great deal of damage could be done by insiders who knew what they were doing, and were aware of the operation of the system, and knew which systems to manipulate. I would just as soon not go into detail on that, but it could be serious; it could be very serious.

For that reason, we feel that it is very important that we have access to records of individuals that might be employed in these plants. We think it is a very important piece of our business.

Senator DENTON. Well, that recent near accident or whatever it was several years ago up in the Northeast certainly generated all the fear and awareness of what might happen.

I can remember a James Bond movie in which James Bond was depicted to have caused a nuclear explosion; in fact, it blew up the whole island, I think. Such things are not entirely impossible if terrorists were to gain control for a period of time over a plant. Is that not so?

Mr. LUNDVALL. Well, the plant absolutely could not blow up. You cannot make a bomb out of a nuclear powerplant.

Senator DENTON. You cannot make a nuclear explosion out of it?

Mr. LUNDVALL. You cannot.

Senator DENTON. You can make a nuclear accident, though, in the terms that I remember in the military, by which there is some kind of an explosion which would propel radioactive material in various directions and different ranges?

Mr. LUNDVALL. It is extremely remote. The TMI incident was a very serious incident, as we are all aware. However, there was no significant release of radioactive material to the environment. As a result, there were no known injuries as a result of TMI, and yet that was a very serious incident.

The point I am trying to make here, sir, is that we have a very significant defense against the release of radioactive material. You have got the reactor vessel itself and the primary system of the reactor is, of itself, a very solid defense against the release of that material.

Beyond that, you have got the containment structure, those two circular buildings that we saw on the diagram, which, of themselves, are very significant, heavy-duty, reinforced concrete structures. And we have a very carefully engineered shutdown system which automatically will work to shut the system down in conjunction with the operators that normally operate the plant.

If you are assuming that the terrorists do not have complete control of the plant, the plant is going to be shut down in a manner that will not be harmful to the public. It is pretty easy to shut one of those plants down. The difficult part is getting it started in the first place.

Senator DENTON. Well, my question included control. If that is impossible, you can state that there is no way a large group could burst in and get control in such a manner as to cause serious damage.

But you say without qualification that there is no way to cause, you say, a bomb of a nuclear powerplant. You cannot cause a nuclear explosion there?

Mr. LUNDVALL. That is correct, sir. I was repeating your words, and I say again you cannot make a bomb out of a nuclear powerplant. It can do lots of things, but it cannot explode.

Senator DENTON. It cannot nuclearly explode. I cannot believe that there cannot be some kind of an explosion.

Mr. LUNDVALL. Explosion in the sense of a nuclear bomb is out of the question.

Senator DENTON. I know enough about the makings of a nuclear bomb to believe that that is entirely true; yes, sir.

Mr. LUNDVALL. Sir, I did not hear your question.

Senator DENTON. Having been a nuclear delivery pilot, and we had to learn how the bombs were made, I can believe that that statement is true from my own knowledge.

Mr. LUNDVALL. The enrichment in the nuclear powerplants is very low compared to bomb enrichment.

Senator DENTON. Well, thank you very much, gentlemen. We may be submitting further questions for your prompt answers. Mr. Deegan, Mr. Hinman, Mr. Lundvall, we thank you for your testimony. Thank you all for your interest here this morning.

This hearing stands adjourned.

[Whereupon, at 11:41 a.m., the subcommittee was adjourned.]

○